

BLIND JUSTICE

Jacobus tenBroek and the Vision of Equality

FLOYD MATSON



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This first full-length biography of Jacobus tenBroek (1911–68), a pioneer in organizing the blind to claim their constitutional rights, tells how he inspired a new social movement and changed the landscape of opportunity for blind as well as sighted Americans.

At the age of seven, tenBroek, the child of Dutch parents homesteading in Alberta, Canada, was blinded by an arrow while playing with a friend. Loss of sight changed his life but not his intrinsic qualities: a brilliant mind, a steel will, and an activist spirit. He attained stunning academic success, earning both doctoral and law degrees, but found the door to a permanent college teaching position closed because he was blind. Eventually he was offered a position at the University of California at Berkeley, his alma mater, where he taught for a quarter of a century.

Floyd Matson, a collaborator and friend, shows how tenBroek, marshalling his formidable talents, became a leader of the organized blind and the founder of the National Federation of the Blind—"composed of blind people, run by blind people, and dedicated to the proposition that those who are blind should speak and act on their own initiative and their own behalf," as Marc Maurer, president of the National Federation of the Blind, notes in his preface.

First and always a champion of the blind, tenBroek fought for equality under the law for other minority groups: African Americans, Japanese Americans, the poor, the physically handicapped. Through his constitutional scholarship, he broke new ground in civil rights, social welfare, and family law. *Blind Justice* helps us comprehend the magnitude of tenBroek's accomplishments as well as the character of his spirit and mind.

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*Friends of Libraries for Blind and Physically Handicapped
Individuals in North America*

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FOREWORD

To attain progress, individuals with common needs and shared goals must organize. And for the blind of America to progress, they too must organize. This salient assessment—and the ability to transform this assessment into action—was one of Jacobus tenBroek's great contributions to the blind community. He recognized that to achieve social, economic, and political goals, the blind must organize on the local, state, national, and even international level.

TenBroek's activism was spurred by his own hard experience with society's perceptions of the limitations of the blind. Beginning as an undergraduate at the University of California at Berkeley and continuing through master's and doctoral programs as well as law school, tenBroek achieved stunning success. But when he tried to find a tenure-track college teaching position, he found the door closed to him—precisely because

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he was blind. Thus began his dedication to organizing for change. Drawing on his academic background and his knowledge of law, he became an agent of reform, working to establish the California Council of the Blind, which he, in conjunction with Dr. Newel Perry, helped organize on the local level; the statewide California Welfare Rights Organization; the National Federation of the Blind; and finally the International Federation of the Blind.

TenBroek also recognized the importance of reading—for the blind as well as about the blind. His support of the talking-book program at the Library of Congress was vital in expanding and attracting support for the program, which today involves more than 700,000 eligible readers in the United States as well as American citizens who live abroad.

The National Library Service for the Blind and Physically Handicapped, Library of Congress, is pleased to publish this first full-length biography of Jacobus tenBroek, written by a well-respected colleague and friend who collaborated with him in building the case for the constitutional rights of many minority groups in America, including, of course, but not limited to the blind. The book is being published in braille and will also be

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available on audiocassette, and both versions will be added to the National Library Service collection.

TenBroek understood that to know the past is to know the present and project the future. By presenting this lucid portrait of this great leader of the organized blind in America, we help ensure a more complete discernment, by sighted as well as blind Americans, of our shared present and future.

FRANK KURT CYLKE

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PREFACE

JACOBUS TENBROEK, who died in 1968 at the age of fifty-six, is best known among blind people as the founder of the National Federation of the Blind, an organization whose title serves to distinguish it from the many agencies and institutions for the blind in the United States. However, Dr. tenBroek is equally well known to law students and legal scholars for his pioneering work in the interpretation of provisions of the U.S. Constitution. In each of the fields in which he was active, Dr. tenBroek sought to promote equality for the people he came to represent and champion—the poor, the Japanese Americans, the recipients of government aid, and, first and always, the blind.

In a century that brought dramatic changes to the lives of the nation's blind, Dr. tenBroek was the principal innovator who altered the pattern of thought and changed the landscape of opportunity. Before he began

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his imaginative writing and speaking on behalf of the blind, numerous agencies already existed to help alleviate the misery attendant on blindness. Under his inspired leadership, a new form of grassroots organization came into being—in effect, a new kind of social movement—composed of blind people, run by blind people, and dedicated to the proposition that those who are blind should speak and act on their own initiative and their own behalf. For the first time in modern history, blind men and women banded together to take a hand in determining their own future. They learned that self-assertion and self-determination are the spurs of freedom; until Dr. tenBroek taught these things through his trenchant analysis and personal example, almost no blind person had dared to be free, had demanded the full range of rights and responsibilities accruing to citizenship. With the establishment of the National Federation of the Blind this pattern changed. In a deliberate and systematic manner, the blind of the nation began to work for their own interests, speak for themselves, and take command of their own destinies.

During the 1960s, after the National Federation of the Blind had been in existence for more than twenty

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years, Dr. tenBroek sought to expand the program of self-assertion and self-determination. He brought together people from around the world to found an international organization of the blind. On both the national and international levels he sought to provide a mechanism, a new and democratic international forum, in which the blind of all countries might speak for themselves and forge the policies of their own enfranchisement. Through it all Dr. tenBroek continued his campaign for equality of opportunity, again and again drafting groundbreaking legislation to afford the blind the right to be active members of the society in which they found themselves—or, rather, in which they might now at last begin to find themselves. An extensive document of his, drafted in the 1960s, bears the title “The Right to Live in the World: The Disabled in the Law of Torts.”

Dr. tenBroek did not live to witness the full flowering of the organized blind movement of which he was the primary founding father. But the handful of blind men and women who set out one cold November week in 1940 in Wilkes-Barre, Pennsylvania, to shake the foundation and disturb the universe of public welfare in America eventually produced a preeminent force

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for change in their own field, one that would give unmistakable reality to the prophetic visions and theoretical innovations of Jacobus tenBroek.

Through the ages, nations have gained their independence by rejecting the domination of others. In turn, minorities within these countries have won their own independence by declaring that false assumptions about their capabilities will no longer be tolerated. Dr. tenBroek created a new perception of human potential, of human possibility, when he asserted that blindness per se—the inability to see, which is quite simply the lack of one of the customary senses—is no basis for the classification of blind persons as inferior to the sighted. But he did more than that. If he had not also demonstrated, by his own example and through the experience of his fellow Federationists, that the blind can compete in the ordinary job market on terms of equality, his declaration might have been regarded as a noble but brash sentiment, admirable but not to be taken seriously. But the demonstration did occur, again and again, although in the beginning it seemed a small and lonely step. With the demonstration of ability, the confidence of blind people grew, and the opportunities for expression and achievement multiplied.

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It is sometimes said that the disability rights movement began in the 1970s with the nondiscrimination provisions of the Rehabilitation Act, continued through the 1980s, and culminated in the Americans with Disabilities Act, adopted in 1990. However, Dr. tenBroek was writing and advocating for the rights of those with disabilities decades earlier and thereby creating the foundation for the laws that would soon follow. His was a magnificent mind, with a spirit as bold. He was a warm and generous man, but he did not tolerate fuzzy-minded thinking, and he was unwilling to compromise. His mind and spirit demanded the best from himself and his colleagues, and his efforts created a new comprehension of human possibility that would not have occurred without him. In the long history of the search for equality and independence, Dr. tenBroek's voice is one that expanded human potential by a faith in those who would otherwise have been rejected. He is a champion among the founders of freedom.

MARC MAURER

President, National Federation of the Blind, Baltimore

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IN *Parting the Waters: America in the King Years, 1954–63* (1989), his monumental study of America in the Martin Luther King Jr. years, the historian Taylor Branch wrote about an important forerunner of Dr. King's in the struggle of black Americans for equality and civil rights: "Vernon Johns was merely another invisible man to nearly all whites, but to the invisible people themselves he was the stuff of legend."¹ That statement, only slightly paraphrased, might apply with equal accuracy to another American leader of a somewhat different cause, a contemporary of Dr. King's who also died in 1968. To nearly all sighted Americans, Jacobus tenBroek was merely another invisible man, but to the invisible people themselves he was the stuff of legend.

The invisible people in this instance were the blind, those one million or more Americans whom another historian has called "the unseen minority." Although

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tenBroek influenced history, presiding over a sweeping revolution in the lives of his fellow blind Americans, he has remained an invisible man to most Americans. The purpose of this book is to make him visible to the world, to recover the history behind his legend as a leader of the blind and then publish both the history and the legend.

But there is more to the book than this—more to the narrative of this man's life and work, more to his legacy, and more to the irony of his public invisibility. TenBroek was not only the charismatic leader of a historic social movement; he was also a scholar whose contributions to constitutional theory and political thought earned him a reputation among his peers as the best among them. Just one of his many achievements should have been enough to gain him public recognition as an important influence in the civil rights revolution of the 1950s and 1960s, but even among another equally invisible people—the people of color—he remained invisible.

The reasons for that curious neglect—and the full story of tenBroek's involvement in the most important U.S. Supreme Court decision of the twentieth century, *Brown v. Board of Education of Topeka* (1954)—are discussed in the book.² The important point is that the veil of obscurity mantling this activist scholar and

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contemplative leader, a blind man of vision who could scale the heights of abstract thought and descend at a bound to the battlefield of social struggle, has scarcely been lifted a full generation after his death. Only within the tight circle of his academic colleagues, his fellow political and constitutional scholars, has there been anything approaching adequate recognition of tenBroek's seminal contributions to our understanding of the highest law of the land, the U.S. Constitution.

To be sure, the measure of his sociopolitical impact does not rest solely on his role in the Supreme Court's landmark decision abolishing segregation in the public schools. It depends more broadly on a thirty-year series of innovative studies beginning while he was still a student in law school. Remarkably, in that hyperventilated academic setting, tenBroek found the time to research and publish five scholarly law review articles whose common theme was the use of extrinsic aids in constitutional construction. More than half a century later, these strikingly original interpretations are still widely cited as models of historical and critical theory in constitutional law.³

But that was only the beginning, the first premonition of tenBroek's future scholarly achievement. His early study of the causes and consequences of the mass

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internment of Japanese Americans during World War II—the shocking episode that, like the attack on Pearl Harbor, which precipitated it, now lives in infamy—was published to critical acclaim in 1954. *Prejudice, War, and the Constitution* received the American Political Science Association's Woodrow Wilson Award as a definitive interrogation of the politics of prejudice. That book, of which tenBroek was the senior among three collaborating authors, is still in print half a century after its publication.⁴

No less important was the dramatic but virtually unnoticed struggle for the right of the blind to organize—a historic civil right—which tenBroek conceived and orchestrated and carried into political battle in the halls of Congress at midcentury. He was aided in his efforts by two youthful senators who happened to be brothers, who were personally acquainted with physical affliction and political courage, and whose family name is permanently associated among blind Americans with their own civil rights struggle. Ever since, that bitterly contested legislation, the Kennedy-Baring Bill, has been known simply as the Kennedy Bill.

Jacobus tenBroek's political and intellectual accomplishments are too diverse and richly layered to be

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summed up in a prefatory note. But it may be said at the outset that the body of his work in such fields as family law, the rights of the disabled, public welfare, and what came to be known as the law of the poor again and again anticipated the future course of scholarship and public policy in America. As one of his colleagues in political science, Aaron Wildavsky, commented after his death: "No greater testimony can be made to a man's originality than the fact that his work consistently pre-dates the attention that other scholars devote to important subjects."⁵

During his quarter century on the faculty at the University of California at Berkeley, tenBroek built an unusual reputation as a master teacher. A case in point is an unconventional voluntary association known as the TenBroek Society, composed predominantly of former students from his prelaw classes throughout two decades of teaching. Under that banner they have assembled periodically for no loftier purpose than to swap stories and share remembrances of the distinguished don of Dwinelle Hall, whose presence at the lectern was so compelling as to inspire this improbable collection of disciples, devotees, and secret sharers. The TenBroek Society did not actually come into being

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until 1992, twenty-four years after the death of its namesake, and this academic fan club, this select community of scholars, was still saluting its departed mentor into the new millennium.

Another noteworthy sidebar to this narrative of tenBroek's life, evoking the force of a singular mind and will, was the charged space of student activism at the University of California at Berkeley during his career as a faculty member there, from the mid-1940s through the late 1960s. That turbulent period began at the dawn of the Cold War, with its red scares and loyalty oaths, and reached a distinctive climax in the next generation with the student uprisings of the Vietnam War era. Through it all—through the blacklists and inquisitions, the sit-ins and the love-ins, the flower children and the Weathermen—the familiar figure of Dr. tenBroek bestrode the campus world like a colossus or, even more apt, like an Old Testament prophet, his white cane and reddish beard outthrust, his voice like a trumpet above the tumult—not only heard but acknowledged, not only acknowledged but resoundingly affirmed.

There is, indeed, an explanation for the unusual importance of tenBroek's testimony to the world, the

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accumulated testimony of a lifetime of writing and teaching and advocating, which for all its diversity of issues and causes might be condensed into a single all-encompassing theme: the struggle for equality. Equality, for tenBroek, was the last great goal of democracy yet to be accomplished—the hope deferred, the one true thing demanding to be realized in the world. His own life was an unrelenting battle for equality, not just for himself as a blind man but also for all the disabled and dispossessed, the invisible people of the earth. His social philosophy was a prophetic vision of equality, the bold agenda for a constitutional democracy not only free but also equal under the law. Both in his calling as a leader of the organized blind and in his vocation as a scholar at law, he uncovered and attacked the roots of segregation, discrimination, exclusion, involuntary servitude, unequal protection, racial pride and prejudice—the whole dark and shameful underside of the American dream.

Jacobus tenBroek, in his visually challenged life, made the choice to light a candle rather than curse the darkness. One can almost hear the voice of Winston Churchill, carried on the wind, murmuring: “Some candle! Some choice!”⁶

I

THE BLIND ENLIGHTENMENT

WHEN young Jacobus tenBroek graduated from the California School for the Blind, in the rock-bottom depression year of 1931, the window of economic opportunity for him and his fellow students was shockingly narrow but not altogether shut. A variety of modern institutions holding out the promise of some sort of educational rehabilitation for the disabled and distressed—as distinguished from the hopelessness of the almshouse and the poorhouse, the old era of “charities and corrections”—had been springing up in America for a full century and in Europe for another half century or more. Besides the experimental schools for the blind, which began to appear in the 1830s in New England and elsewhere, there were others addressed to the newly discovered potential of outcasts, those officially labeled “deaf and dumb,” “cripples,” “idiots” (or “feeble-minded”), “insane,” and others

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who had only lately been shunned, sequestered, and swept aside by society. The changing cultural and intellectual atmosphere of Boston, then at the center of the cresting wave of reform in seemingly every field of social thought and action, was vividly described by Van Wyck Brooks in his classic account *The Flowering of New England: 1815–1865*, first published in 1936:

Boston, all New England respected learning. No New England boy was allowed to question that he was destined to succeed in life, provided he knew enough; and Boston was determined that the boys and girls, and the blind and insane as well, should have an opportunity to know enough,—schools based on the best current theories, reform-schools that really worked reform, schools for the blind that caused the blind to see. . . . Boston had taken [William Ellery] Channing at his word and really believed in perfectibility.¹

The belief in perfectibility went to the heart of the matter. There were various explanations for the sudden flowering of the new reform movements during that adventurous era of revelations and revolutions (especially in Europe), of grand experiments and great awakenings, but the underlying impetus was everywhere the same: the extraordinary paradigm shift known as the Enlightenment, the epochal sea change in culture, conscience, and consciousness that engulfed the Western

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world in the eighteenth century and, if not quite everywhere or all at once, turned it from a theocratic into a broadly democratic civilization. Western civilization—the term had a powerful resonance, even in the heyday of nationalism in the nineteenth century. The shock waves from the *Aufklärung*, as the Germans called the Enlightenment, had penetrated every field of endeavor but were felt most deeply in the realm of ideas: shaking the foundations of established systems of thought and belief, whether moral, political, religious, philosophical, scientific, or, perhaps most profoundly of all, psychological. The Enlightenment, as educated Europeans and Americans experienced it, was grounded in a radically new conception of character and personality—a distinctly optimistic, not to say idealized, vision of human possibility. For the first time in the history of Western peoples, not excluding the Greeks, the radical ideals of political democracy—those shocking declarations of natural rights and personal liberty, freedom of expression and equality of opportunity—were not merely proclaimed but widely acknowledged as among the essential, hence inalienable, characteristics of human nature. Also for the first time it could be believed, virtually as an article of faith, that “boys and girls, and the blind and

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insane as well, should have an opportunity to know enough," in Brooks's words—which entailed as a matter of course "reform-schools that really worked reform, schools for the blind that caused the blind to see." The miracle by which the new schools would cause the blind to see was, of course, the illumination of reason—in a word, enlightenment. That, and no less, was the goal of the bold and brash educational reforms projected by Samuel Gridley Howe and his fellow *illuminati*. They truly believed, in a biblical phrase given new meaning by the Enlightenment, that human beings could know the truth and the truth would set them free.

It was a heady time in the modern world, shaped by the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789) and the massive political upheavals that whirled in their wake. To be sure, not everyone was ready for the future that was suddenly present; some thought the changes came too fast, while for others they could not come fast enough. "It was the best of times, it was the worst of times," Charles Dickens declared in his fictional account of the revolutionary period, *A Tale of Two Cities* (1859). One historic legacy of the democratic Enlightenment that became abundantly

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manifest in the nineteenth century was the outpouring of reform movements and social crusades of seemingly every persuasion. The fires of some of these crusades have continued burning to the present day—the anti-slavery cause, which would evolve into a struggle for civil rights; the women’s movement, which in time advanced from voting rights to equal rights, not an easy progression; and a proliferation of other causes and commitments that somehow survived underground or out of public view, blazing briefly and smoldering at length, zealously proclaiming their magnificent obsessions and now and then, with luck, slightly extending the parameters of social consciousness.

Conspicuous among these movements were the new schools and institutes addressed to the outcast flocks of the “lame,” the “halt,” and the blind—all those once confined in the old almshouse asylums, which were at long last coming to be perceived, with a shudder of recognition, as dehumanized and depraved. As agents of reform, the new institutions took confidence from the public health movement, with its attention to the urban poor and its rapid professionalization of medical and nursing practices. Schools for the blind and disabled were closely allied with the movement for free public

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education, led by the indomitable Horace Mann, a friend and admirer of Howe's. Another of Howe's collaborators was the equally resolute Dorothea Dix, at once a pioneer in the drive to "feminize" public education—that is, to allow girls in—and a prime mover in the campaign to rehabilitate the insane. At the deepest level of public consciousness, all these novel adventures into the domain of health, education, and welfare could be traced to the reformist zeal of the Enlightenment; more immediately, they were part of the wave of populist democracy that defined Andrew Jackson's rise and would reach its apogee in the mythopoetic figure of the Great Emancipator, Abraham Lincoln. In addition, as the historian Robert William Fogel has demonstrated, the reform movements drew inspiration from the Second Great Awakening (1800–1920), the religious revival that spread like wildfire across the country during the same period and emboldened the common people's faith in their God-given equality as citizens of this new Jerusalem, this promised land, this other Eden.²

None of the new scenarios of reform and progress was more visionary than the experiment in the education of the blind, begun in the 1830s by a group of philanthropic Bostonians under the ambivalent appellation "The

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New England Asylum for the Blind, for the purposes of educating the blind.” The mixed message of that name—asylum versus education—holds a clue to the conflicting impulses, at once progressive and regressive, that collided in the struggle to define the destiny of this unfamiliar institution. Was it intended merely as the protective shelter of a helpless population of inmates? That was surely what an asylum represented, in this or any other age. Or was it in truth conceived and designed for the education of the blind—that is, for learning, communicating, discoursing, even for reading? In previous times such things were not merely unattainable but unimaginable. Everyone knew that the blind, being without vision, were ipso facto without reason, lacking all sense (in the full meaning of the term), unteachable except for rote behavior, as trained animals were. To be out of sight was to be out of mind, as always. But now, incredibly, in the afterglow of the Enlightenment, those axiomatic assumptions were being challenged openly, tested experimentally, re-examined philosophically, even satirized theatrically, as in the plays of Voltaire and Molière.

That was the way things stood in Boston, with respect to the New England “Asylum” for “educating

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the blind,” when thirty-one-year-old Samuel Gridley Howe, fresh from the revolutionary wars in Greece, assumed leadership of the institute, now renamed the Perkins Institution and Massachusetts School for the Blind. He began the process of changing forever what it meant to be blind, guiding the residential school and its pupils on the path toward literacy, respectability, and responsibility, and thereby ushering in a new age of reason, a dawning of hope for the hopeless, that might one day be characterized, without fear of ridicule, as the Blind Enlightenment.

Howe's Educational Reforms

Howe (1801–76) was not unprepared for the challenge. An 1821 graduate of Brown University, he earned a medical degree from Harvard University three years later and then began a life of devotion to the political and therapeutic struggles of liberation that were to preoccupy his century at home and abroad. He was drawn first to Greece, where he spent six strenuous years involved in its war of independence—not as a physician, as he had expected, but as a soldier, a leader, a near-casualty, and a proclaimed hero. If young Sam Howe had left home a callow idealist, he came back a seasoned

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idealist, scarcely less committed to the Enlightenment faith in the transforming power of reason and the indefinite perfectibility of the human condition.

The story, perhaps apocryphal, is told that Howe, newly returned from the wars abroad and not yet certain of his next adventure, was strolling down a Boston thoroughfare one day when he chanced on a number of prominent citizens emerging from their deliberations on a proposed new institution for the blind. "Here is Howe," exclaimed one of the gentlemen, "the very man we are looking for!" What makes the story believable is the fact that, aside from his exploits in the European revolutions, Howe had already gained a reputation as a physician, a scientist, and a man with modern ideas and lofty ideals. What was not yet known was that he, as much perhaps as any other in his time, was to be a torchbearer lighting the way to freedom and new opportunity, not just for the blind but for all who were still shut away as idiots, as insane, as deaf and dumb. And something else: in a very real and dangerous sense, Howe would take up the torch for one other outcast group, another invisible people. In the years leading up to and including the Civil War, he was to become a prominent figure in New England's antislavery movement, sharing leadership with

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such leading abolitionists as Charles Sumner, Wendell Phillips, and William Lloyd Garrison. To the cause he lent his voice (some said he was a greater orator than Phillips himself, some said not); his pen, as the editor of the *Boston Commonwealth*; and even his stately mansion, Green Peace, as a refuge and way station for fugitive slaves making their uncertain escape via the underground railway, heading northward or heavenward along the invisible, indestructible Freedom Road.³

In short, Howe was, in Emerson's phrase, a "representative man," emblematic of his place and time. Through all his exploits and adventures, his innovations and reforms, ran the connective thread of a sincere democratic humanism—a faith in people or, more precisely, in persons, unqualified by distinctions of race, gender, or accident of birth. In the classical tradition that he had fought for on the battlefields of modern Attica, nothing human was alien to him. For all his upper-class gentility (or perhaps because of it), Howe embodied that Yankee spirit of self-reliance apotheosized by his neighbor Emerson as well as the heady aspiration of the French Revolution: "Liberté, Egalité, Fraternité."

During his long tenure at the Perkins Institution—he was to remain at its helm for forty-four years—

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Howe rarely passed up an opportunity to expound his all-too-modern and controversial philosophy of education. From the outset he fought against the prevailing tendency to refer to the school itself as “the Blind Asylum.” The very idea of asylums appalled him; as late as 1857 he still protested to a colleague: “What right have we to pack off the poor, the old, the blind into asylums? They are of us, our brothers, our sisters—they belong in families; they are deprived of the dearest relations in life in being put away in masses in asylums.”⁴ Howe’s objection to the asylum was to the grim philosophy of administration best symbolized by the inscription espied by Dante atop the gate of Hell: “Abandon hope, all ye who enter here!” His own philosophy, expressed in a letter to the parent of a blind boy entering his institute, spelled out the objectives of a modern school for the blind with its active goals for socially interactive children:

The great lesson—the hard lesson—your son has first to learn is—to *be blind*: to live in the world without light; to look upon what of existence is yet vouchsafed to him as a blessing and a trust. . . . The first step is to become so accustomed to the use of his other senses as to reap every possible advantage from them, to establish new means of relation with things about him, and to do by means of hearing and feeling what others do by sight. This can most readily be brought about by associating with other

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blind persons, and especially in being in a school for the blind. There he will soon learn to feel that he is not a lonely isolated being, cut off from all the enjoyments and occupations of others and excluded from competition with those about him; but he will find himself one of a number who are contending for knowledge and power and distinction, and who, thus stimulated to action, bring into operation a hundred faculties and contrivances which alone they would never have resorted to. It is the self-confidence, the mental reliance, the habit of effort, which would be of great use to your son, and not the books, maps and other appliances of a "Blind School."

In about three months he would learn to be active and self-reliant, in six he would learn to read; and then he would have attained the principal good which he could expect there, unless he intended to devote himself to the study of Music or the Mathematics.⁵

The essence of Howe's advice to these parents was not to coddle or overprotect their blind child but to give him freedom and opportunity to blunder, experiment, act on his environment rather than merely react—and not just act alone but interact with his peers and classmates at a school for the blind, where he might experience the virtues and rewards of competition and contest, both victory and defeat. In effect, Howe was teaching a modern Victorian doctrine of "tough love," of the strenuous life, administered through a school of somewhat hard

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knocks—all in the interest of the ultimate prizes of self-reliance, self-confidence, and self-esteem. “Do not be over-anxious about him,” Howe advised the parents. “Do not watch him too closely. . . . If he is groping his way across the room, and a stool or other article chance to be in his path, do not scream to warn him, nor hasten to remove it, but let him trip and tumble over it; the pain would be well paid for by the lesson.” And so with a hundred other little things, said the schoolmaster: “He had better pinch his fingers slightly with a pair of nippers, or with the nut-cracker, or in the joints of the tongs; he had better jam them a little with the hammer, or wound them with a screwdriver, than never handle these articles.” Nor did the lesson of trial-and-error end there, with such minor discomforts as these. In a bold departure from the conventional pedagogy of his time, Howe urged that the blind child be allowed to take harder risks and face real dangers: “Let him use the corkscrew, and bore with gimlet and bit, and cut with the hatchet, and split wood with the axe and cut it with the saw, rather than abstain from knowing and using those articles lest he should wound himself.”

These *Counsels to Parents*, composed in Howe’s last years as head of the Perkins Institution, follow the progress of the blind child toward adulthood. They conclude with a

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doubtless old-fashioned but not yet obsolete message on the responsibilities of good citizenship:

As he approaches manhood, he should assume and perform all the relations and duties attendant upon that age. He should put himself forward and take on all civil rights, and offer to perform all civil duties which do not absolutely require eyesight. He should attend primary parish meetings; seek to fill places on voluntary committees for benevolent purposes; attend caucuses and political meetings, and discuss political questions and the qualifications of candidates for office, from that of log-reeve to that of governor. In short, forgetting that he is blind, he should associate with his fellow-citizens, and labour with the most intelligent and virtuous of them for the promotion of the common weal.⁶

The message of this disquietingly newfangled educator was that blind children were not barred by their condition from the full range of rights and responsibilities—civil rights, as Howe presciently called them—that were guaranteed constitutionally to every citizen of the land. These rights, the emblems of equality, would moreover be earned and validated through active association with others in state and community affairs, not least with respect to issues affecting blindness and the blind. This was not a popular message to the proper Bostonians of his day. But no one then had a better right to say these uncomfortable things to the silent constituency of blind

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youth and their parents, still cloaked in the custodial hoods of the asylum and the almshouse. And no one, more than Howe himself, had a better chance of getting his educational agenda approved by a complacent community still mired in the backwater of old prejudices and superstitions. Here, for example, was Howe's advice to city fathers and mothers everywhere in the country, in the North and the South alike, on the delicate subject of the racial composition of his student population: "I should no more think of refusing to help one of my fellow-mortals on account of the colour of his skin, than the colour of his hair; and I know too well the liberal and philanthropic spirit which actuates our Trustees not to feel justified in asserting that they will provide every facility for educating all blind children, black, white, or red, who may apply to them."⁷

Howe's pioneering work of reform and rehabilitation on behalf of the blind of America in the mid-nineteenth century can be easily described but barely comprehended in its radical sweep. The blind children placed in his care he guided, through a raised-letter alphabet of his own devising, to the discovery of language itself. Thereby, for the first time in their once cloistered and wordless lives, they came to know the joy of reading, the

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art of writing, the pleasure of conversing, and the power of reasoning.⁸ It can be said without hyperbole that, as their minds opened up, the lives of these apprentices opened out—to the universe of discourse, the realm of ideas, and the sunburst of the great globe itself. “Intelligence,” as Santayana wrote, “is one centrifugal ray, darting from the slime to the stars.”

That was the extent of the enlightenment that Samuel Gridley Howe, as first among peers and visionaries, brought to the blind of America. It did not bring them surcease from struggle in their lives, nor a guarantee of success in their labor, nor certain happiness in their future. It did not fully relieve the blind, even the most gifted among them, of the immemorial burden that Jacobus tenBroek was to call “the cross of blindness.” The Blind Enlightenment first appeared as a portent, a sign, a hope, the early spring of hope, giving rise to new possibilities and fresh beginnings. In Dr. tenBroek’s time the organized blind would declare, in the words of the preacher: “We have come too far to turn back now.” And in the time of the new century and a new millennium, they might even dare to say, with the same preacher: “Free at last! Free at last! Thank God Almighty, we are free at last!”

II

A CABIN ON THE CANADIAN FRONTIER

IN the small Dutch town of Amerongen—three or four hours by train and bus from Amsterdam, somewhat nearer to Utrecht and Dreibergen-Zeist—there lived in the latter years of the nineteenth century a respectable citizen, said to have once been burgermeister, named Nicolaas tenBroek and his wife, Johanna. It is likely that the couple had known each other most of their lives: buried in the old town cemetery in Amerongen and in the graveyards of the surrounding countryside are generations of tenBroeks, as well as other families with variations on the name, and no lack of Van Wycks (Van Wyck was Johanna's maiden name).

We have these vital statistics on good authority. In 1967, the last full year of his life, Jacobus tenBroek, accompanied by his wife, Hazel, and his daughter, Anna, visited the ancestral Dutch township and searched its records for traces of his family's history. He

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turned up little enough in the short time available to him, but in the community graveyard he did locate "one marker bearing the name of *Jozef tenBroek* with an indication that he died in Utrecht in 1925, and an apparently much older grave bearing the label *Jacobus van den Broek*." But the visiting tenBroeks also learned that Broek is a common name in Holland, of both families and localities. "There is a town," tenBroek found, "on the Amsterdam to . . . Haag road called Bennebroek" and another town northwest of Amsterdam called Broek-in-Waterland. And he added: "It is commonly supposed that tenBroek and van den Broek simply indicate men of the town of Broek." That spare information was all the graveyard yielded,¹ even to this prodigal grandson, whose roots lay between the ancient towns of Broek and Amerongen and who had come home at last.

If the grandparents, Nicolaas and Johanna tenBroek, growing up side by side in Amerongen, had known each other almost from birth, it is just as possible that as a couple they never traveled beyond the borders of their native Holland, if indeed they ventured as far afield as the glittering capital of Amsterdam. There was not much mobility, either outward or upward, among ordinary folk in the towns and villages of the Netherlands in

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those days. But that would change for the next generation of the tenBroek family.

Nicolaas Jr., born in Amerongen on January 11, 1870, left home almost as soon as he became old enough to make a choice. Sometime between the ages of seven and fourteen, Nic (as he would always be known) signed on as a cabin boy with a departing schooner and was gone for what might have been forever. For several years he sailed the seas and toured the great ports of the world—or so he liked to boast in later life while regaling the family with tales of his great adventures before the mast. But that breakaway episode abruptly ended one day when he was in his early twenties. On learning that his mother had suffered a stroke, Nic promptly returned home to Amerongen to care for her through the next year. The outcome of that devoted vigil is not known. Nic himself turned up some years later, halfway around the world, at an émigré Dutch colony in the San Joaquin Valley of California—no longer a seagoing man but a farmhand, a landlubber. Still a young man, he was eager for more roistering, not quite ready to settle down. During the last years of the century, a violent struggle over water rights broke out between the big landowners and the small farmers of the valley. Rights to the water—

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and hence to irrigation—were gained and lost more often by force of arms, so it was said, than by the tedious processes of the law. Nic tenBroek was rumored to have been mixed up one way or another in a number of those pitched battles. Apparently he gave as good as he got and emerged more or less intact, if not noticeably improved either financially or behaviorally.

A Dutch Émigré in the New World

Nic's arrival in the fertile San Joaquin Valley, in about 1890, occurred at a propitious moment. The town he landed in, Hanford, had been incorporated only a year or so earlier and was a vigorous part of the farm community springing up around Fresno, the regional center. Itself just a few years older, Fresno had evolved from a railway whistle-stop called Fresno Station, built in 1872 by the far-sighted entrepreneur Leland Stanford. With the arrival of the railroad, irrigated farming began to take hold, and the boom was on. "With no woodland to be cleared or heavy sod to be broken, it was an 'easy' frontier for settlers," the geographer James J. Parsons wrote. "Swarms of immigrants from the east and from Europe were attracted by 20 to 40 acre plots either in cooperative colonies or private land development

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schemes. The colony names—Scandinavian, Temperance, Nebraska, Nevada, Alabama—tell part of the story.”² Among the more prosperous ventures was the Italian-Swiss colony, which wisely chose to concentrate on harvesting the tender grapes that long ago were made sacred (“*in vino veritas*”) as well as profane by their Roman ancestors. The flourishing Dutch colony, clustered around Hanford and Ripon, was identifiable at a glance by the imposing square presence of the Dutch Reformed Church. In this “Little Holland,” Nicolaas tenBroek, grounded at last after his years before the mast, gave up his seven-league boots, never put them on again, and entered the most decisive stage of his life.

Here in this great, fertile basin of inland California, the world’s richest agricultural valley—already the scene of class struggle and cutthroat competition that the novelist John Steinbeck would later portray as a “dubious battle” on “the pastures of heaven”³—Nic tenBroek was to eventually receive three providential gifts that fulfilled his life goals. The first of these was the discovery of his true career, a natural enough calling for any stalwart Hollander—farming. The second was his own place of grace, a place in which to make a permanent home—Hanford, California. The last of the gifts, the centerpiece

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of his vision, was a good woman—more than that, the *right* woman—to share it with. At the time of his arrival, she was still in Holland but in a few years would migrate to the new land under contract as a housemaid for one of the affluent Dutch families in Hanford County. Thus, in the long term if not immediately, Nicolaas tenBroek found his future in the little town of Hanford nestled in the sun-blessed San Joaquin Valley of the sprawling frontier state of California.

Nic found work as a farmhand just outside Hanford and began to make the transition from swabbing decks to slopping hogs. As he became accustomed to the farming life, he discovered its rhythm and simple pleasures: the honest labor in the dry heat of the fields, followed by the well-earned leisure of quiet country evenings that were surprisingly cool even in the long hot summers and the golden light of August.⁴ Nic found himself irresistibly drawn to the farming life.

At the start of the new century, after working as a farmhand for some years, Nic, now thirty years old, reinvented himself as a construction worker. He worked on a variety of major building projects in the West, among them the Salt Lake trestle and other feats of construction engineering in Reno and Yosemite, rising to the rank of straw

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boss. In 1906 he happened to be working in San Francisco on the day of the Great Earthquake, a natural cataclysm of tremors and fires that demolished in a single day most of the storied city by the bay. Surviving that seismic shock, Nic worked for a time on the biggest project of them all in that engineering heyday: the Panama Canal. Afterwards he returned to the Dutch community in Fresno, where he resumed work as a farmhand.

As this migratory pattern of restless changes and shifting occupations suggests, Nic tenBroek had not yet found his place or purpose in life. But his life as a loner and wanderer was about to end. One day late in 1908 Nic and another Dutch bachelor, Walter Duarz, came on one of the many newspaper notices circulated by the Canadian government during those years offering an attractive deal for new settlers coming into the raw northwestern province of Alberta: one-quarter of a section (about a quarter of a mile) of free land, homestead land, to anyone who would agree to work it for three years and thereupon become a Canadian citizen. With all its risks and obligations, it was an offer the ambitious Hollanders could not refuse. That year Nic and Walter made their way to Alberta and acquired separate homesteads a short distance apart. Nic, the farmer, shrewdly selected the most

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level acreage available, while Walter, the carpenter, with an eye to the lumbering trade, opted for a wooded area of the section a couple of miles away. This mutually helpful division of labor and land by the two partners, with Nic providing the means of subsistence and Walter the means of shelter, may well have meant the difference between survival and disaster during the long, relentless winters on the freeze-dried prairies of that wilderness frontier.

The timing of their arrival in this newest and bleakest outpost in North America was auspicious. A decade earlier, in 1898, the great Klondike Gold Rush had begun, soon becoming an avalanche of smothered hopes and buried dreams for all but a few of the hundred thousand gold seekers who stormed the Yukon that feverish year. Most of them would soon wish that they had never left home as they came face to face with the unimagined terrors of a desolate wilderness stretching thousands of miles before and around them. In addition, they had to contend with the depthless and treacherous snows, the murderous bands of outlaws lurking behind every river bend and in the frozen hills, and the ravenous hunger that overtook them when their food ran out and they were driven to devouring the rotting carcasses of their own pack animals. That

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horror drove them mad before it killed them; for long years after the gold rush, according to legend, the mountains and valleys of the Yukon echoed with the sound of their dying screams, carried on the wind.⁵

This history, however, had been transformed into mythology by the time the two Dutchmen arrived in Alberta, the western territory that in 1905 had become a new Canadian province. Nic and Walter found themselves caught up in a wave of homesteaders not unlike themselves, though mostly Yankees sharing the American dream of a new life in a new land. They swarmed over the beckoning province like locusts, lured now not by dreams of gold but by dreams of land. During the first decade of the century, the population of Vancouver doubled and that of Edmonton tripled. But there was a bountiful supply of empty land on the prairies, good land by the look of it, there for the homesteading. It seemed to the pioneers that here, in this daunting outpost of the immense continent, they would surely find their appointed haven.

For Nic tenBroek and Walter Duarz, however, the most immediate need was to build shelters for themselves and the team of oxen that Nic had purchased for plowing. They were able to buy all the logs they needed

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from an enterprising neighbor named Adam McDonald, who with his five sons had had the foresight the previous year to cut massive stores of logs to sell to prospective settlers. (His farsightedness paid off; in a short time the area they were all working in would take the name of McDonaldsville.) With help from the strong-armed McDonald clan, the Dutchmen first set about building a log cabin for Nic. It consisted of two rooms measuring 16 by 32 feet—a total of 512 square feet; the corners were grooved, the chinks filled with sod, and the beds built-in bunks with mattresses of cotton ticking packed with prairie grass. As soon as this was completed, the crew went to work on a somewhat fancier second cabin of milled lumber for Walter as well as a sod barn for the oxen. Nic also purchased a plow and harrow to clear ten acres of land for planting wheat in that first year of homesteading.

Much of this narrative of the tenBroek family's prairie years, with its tidy domestic details and wry touches of humor, is drawn from the unpublished reminiscences of Geertje Maria Bogerd, the young Dutchwoman who became Nicolaas tenBroek's wife. Following is part of her recollections of the confused and rather devious circumstances that led to her meeting with her future husband:

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By the time that first long cold dark winter settled down and the homesteaders were snowbound, Nic was yearning for company, especially female company, so began the search for a wife. Accordingly, Nic wrote to a Dutch friend in California about his desire for a wife. Verkuyl, the Dutch friend, was active in supplying prosperous merchants in Hanford, California with housemaids from Holland. Among those maids living in Hanford was Geertja Maria Bogerd, age 19, who had served a mill owner's family almost a year when she contracted scarlet fever and was isolated in the Kings County Hospital. Verkuyl led her to believe that she could not return to the family because of the communicable disease and that she could be deported back to Holland if she became a charge of the state. In these circumstances she was amenable to the suggestion that she should consider marriage to a lonesome landowner bachelor in Alberta, Canada.

After a few letters and photographs were exchanged, she accepted the proposal along with the money for train fare and a new dress from a mail order house in Chicago. While Maria waited for the dress from Chicago, Nic waited for his bride in Canada so long that he believed he had been swindled by both Verkuyl and Maria.

When Maria arrived on the afternoon train in Kitscoty, Nic had to scurry to buy a new suit, find a preacher, witnesses and a ring for the bride. Since she was the first bride and her arrival had been in doubt, no one was prepared for a wedding, least of all the groom who still had the price tags hanging on his new suit during the ceremony.⁶

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Despite the surprises and the dangling price tags, the wedding was held on April 23, 1909, “in the presence of witnesses Alex Gilmour and Tressie Bremner with Methodist clergyman Robert H. Davis presiding.” Maria clearly had a sense of humor about the rather slapstick ceremony as well as more than an ordinary amount of simple courage. She would need both qualities and more in the sunless seasons on that lonely outpost of the Canadian frontier.

The Flight of an Arrow

Nic and Maria tenBroek’s first child, named Nickolas, was born in 1910 with the help of a midwife whose services were urgently required when Nic failed to return with the doctor until an hour after the birth. The midwife, Mrs. Coat Bennet, a stalwart and clearly indispensable member of the local community, would also be needed for three more tenBroek children—“another boy and two girls,” as Maria’s notes laconically relate.⁷ The second son, born on July 6, 1911, was named Jacobus, a properly sober biblical name in the Dutch Reform tradition. Nicknamed Chick during his first year at school (apparently, during the morning roll call of students his name sounded like *Chickobus* to the

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other pupils), he was never again called Jacobus by anyone except his parents. After Jacobus came Johanna in 1912 and Lillian in 1915. The fifth tenBroek child, Ivy, born in 1916, was delivered in a hospital in Lloydminster, one day's distance by buggy, where Maria, after suffering an attack of appendicitis eight days earlier, had been confined, packed in ice, until she could safely undergo an appendectomy. One more child, Carole, was born in California in 1923.

Until the age of seven, Chick tenBroek was a boy much like any other, with normal eyesight and normal impulses, a lover of physical games and contests and a free-spirited son of the northern prairie. In the summer of 1918, Chick and a chum were playing an improvised game of bow and arrows, sometimes called "Indians," taking turns aiming at a primitive bull's-eye target cut out of a large piece of canvas. On a sudden impulse, Chick dashed behind the target to peer through the hole in the bull's-eye at his friend. At that moment the other boy released an arrow from his bow—and, for once that day, it was perfectly on target.

By the flight of an arrow an eye was lost. The injury resulted in the permanent loss of all vision in Chick's left eye. In a further accident of circumstance and neglect,

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sight in the remaining eye was first endangered and then extinguished. In remote and rural Alberta, the nearest medical help was more than twenty miles away, a full day's travel in the best of weather. By the time the boy could be brought to the doctor, the damage to his remaining eye—the result of sympathetic ophthalmia, a condition in which nerve damage is transferred from one eye to the other—was well advanced and would become progressively worse. Somewhat later, the doctors held out one last hope: it would require a second operation that, if successful, might restore some of his lost sight. But the procedure failed dismally, leaving Chick now blind in both eyes except for minimal light perception in the right one. He spent ten days in the hospital after the surgery before becoming aware that he would never see again.

Surely that was enough anguish for any child to bear, with so much of life still ahead of him. But the arc of destruction set in motion by the flight of an arrow was to be completed by one more freak accident—this one occurring seven years later, also at a sporting contest. On the baseball diamond at the California School for the Blind in Berkeley, Chick was struck in his “good” eye by a thrown ball, causing an infection that forced the

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surgical removal of the eye itself. That was the end of the long ordeal, the total and permanent loss of all vision. No further harm could be done. Somewhere an arrow, its flight over at last, fell to earth.

The lean years of homesteading on the Canadian prairie were not altogether a hard-knock life for Jacobus even after that incident at the age of seven effectively removed him from the world of the seeing. He was still a normal youth in every other way, living normally, playing normally, and working normally—that is, if it can be said that the daily chores of a frontier homesteader's son were ever normal. Not knowing any other way of life, Chick simply accepted his, cheerfully enough most of the time—without any sense of differentness, let alone inferiority, on his part. But there was one thing that did frustrate him continually in his childhood and was to do so throughout his life—and that was not the reality, the physical disability, of blindness but rather the misconception of it by others, the social handicap of blindness, which that perception carried with it like a cross into the world.

One story, possibly apocryphal but entirely believable, has been handed down through several generations of the family and may serve to illustrate the significance of

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this baneful influence on the developing mind and will of young Chick tenBroek. Here is the crux of the story, which follows the narrator's account of the ill-fated second operation:

His first impulse was to conceal his blindness and hide from other people. It was an incident [to come] that aroused his anger and resentment, and made it possible for him to express it openly, that rescued Jacobus tenBroek from this dangerous feeling of inferiority and impulse to shrink from sight.

A group of girls was riding horseback near the tenBroek home, and Jacobus and his brother conceived the mischievous idea of blowing up paper bags and bursting them to scare the horses. The girls retaliated by making fun of Jacobus's blindness and saying he was so stupid he could not get out of the first grade in school. Jacobus was infuriated. He made up his mind that he would fight back at the world and never again let anyone taunt him in this way.⁸

In those early prairie years, to be sure, Chick found himself up against not only the social world, with its ingrained attitudes, but also the natural world, with its resistance to human intrusion and indifference to human concerns. The ground beneath the feet of these pioneers, the primal source of sustenance and survival, was rock hard and fully as stubborn as Dutch willfulness itself, resulting in a pitched battle between humans and nature

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that usually ended in a standoff. The unsparing winters were endured in snowbound isolation and a yearning for the remembered taste and texture of fresh food. Water was always at a premium. “The family washing was an ordeal,” Maria recalled, “because the well water was so hard that soap only formed a thick scum on the clothes that was impossible to rinse out. Every drop of rain water was caught in a rain barrel to be used for washing hair and clothes.” When there was no rainwater, fresh water had to be hauled from the nearby sloughs. But there was at least one standby, even if less than ideal: “Well water was used for drinking by the family and the animals. Well water was also used for cooking and deposited a thick layer of scale in all the pots.”⁹

Life for the tenBroek family was hardest, to be sure, during the early part of their nine-year stay on the Canadian prairie. But even then, as often as not, there was meat for the table—wild geese, ducks, and prairie chickens. When Indians came through the area, they often brought along frozen fish for sale to the homesteaders. As time went by, things got a little better. The family acquired some pigs for butchering and a few cows for milk and butter. When World War I—the Great War, as it was then called—exploded in August

1914, the global market for wheat soared, and farmer Nic became prosperous enough to buy a team of four horses and another half-section of land from the railroad. Maria's later memoirs record that "the horses were wild horses that were caught and broken for plowing by some unknown wild-horse catcher." And she adds a sly note: "After this, Nic became so prosperous that he could build a two-story frame house and buy a Ford automobile." By this time, also, there were enough children in the little prairie community that the farmers and loggers pooled their labor and resources to construct a one-room schoolhouse that would also serve for community meetings and "socials."

Among the children who benefited from the schoolhouse was the new elementary student Jacobus ten-Broek. Provoked by the taunts of his peers and the doubts of his elders, doubly determined to show the world what a blind youngster could do and might become, he was poised to take his first step on the path toward a future that in his boyish imagination was to be full of great deeds and unceasing bravery—in short, a hero's life. As it turned out, however, the boy was far off the mark in his wishful reveries. The reality of his life would be even richer.

III

THE YEARS WITH "DOCTOR"

IN 1919, after ten years in the far northwest of Canada, Maria tenBroek finally persuaded her husband that, in her own words, she "could no longer endure the rigors of homesteading nor the bitter cold of Canadian winters." More than all else she wanted to return to California, to the sunny midlands of the Golden State. Although her reminiscences do not disclose it, Maria may have had another and more compelling reason for quitting the intractable frontier: the year before, her seven-year-old son, Jacobus, had lost the sight of one eye to a flying arrow, and he was in imminent danger of losing the little vision that remained to him. Nicolaas obligingly sold the family home and property, and the tenBroeks moved back to the San Joaquin Valley. Some fifty years later, Maria recalled that "Nic regretted to his dying day that he had left 'God's Country.'" But that was far from her own opinion. "Maria," she wrote of herself,

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“is still living in Hanford County, California, and daily declares that the prairie in Canada was certainly the most ‘God-forsaken’ place in all of North America.”¹

Maybe the truth, as it does so often, lay somewhere between. Nic saw the cabin that tottered and buckled in the bone-chilling winters give rise to a two-story, modern house and a thriving farm now doubled in size; he had to feel pride in his accomplishment. But Maria looked out the kitchen window and saw an alternate reality: unremitting struggle against the hostile forces of the northern frontier, its devastating winter storms followed by the short but cruel droughts of summer—the endless vicious cycle of the seasons in that Siberia of the New World. As the center of this struggling brood, she saw something else happening that must have tipped the scales of judgment in her mind: namely, the waste of a blind son’s life. For if the tenBroek family had not moved to California when they did, if they had endured much longer out there on the prairie as the father wished, eight-year-old Jacobus would surely have been the heavy loser. He would almost certainly have become the prisoner of his hostile environment, barely scratching out an existence from the unyielding land. Thanks to his mother’s determination, the boy was spared that fate.

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Instead he was given another shot at life in a green and promised land—California!—and another chance at living, learning, reading, disputing, even doing great and good deeds some far-off, grownup day.

In June 1919, the tenBroek family crossed the border dividing Canada from the United States and separating them forever from the sodbuster's life on the northern frontier. However, the tenBroeks were not to be separated from the farming life itself. Nic's first step in the new land was to get in touch with an old acquaintance, Tom Gordon, from his days in the Dutch colony in the San Joaquin Valley. It was a lucky move. Gordon owned a substantial farm in the town of Laton, in Hanford County, that needed managing; Nic took over right away, and the family moved in. They did so well, in fact, that in just a year's time Nic bought out the farm—a good dairy farm of some forty acres—for \$10,000.

In those later childhood years on the Hanford farm, as his residual vision continued to fade, Jacobus tenBroek was still treated the same as the other children—although maybe a bit more like his elder brother, Nickolas, than the tagalong string of little sisters, three of them to start with, four in all by the time he was twelve. Jacobus continued to do all the regular chores—

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he pitched hay, milked the cows, irrigated the fields, fed the pigs and livestock, and in summer intervals, when both parents and most of the siblings were off to other pastures, sometimes handled the entire farm operation alone, while also watching out for a baby sister or two. “He took his turn riding the plow horses,” his sister Lillian recollected. “He learned to swim in the irrigation ditch. He rode a bicycle by following the sound of a tin can bouncing along on a country road. A few years later he had a barrel of fun riding a tandem bicycle around the campus with anyone who was able to steer a steady course at the speed that his strong legs could pedal.”²

Teachers, Mentors, and Role Models

In 1919, during the first year of the family’s tenure on the farm, they received a visit from a distinguished-looking gentleman of evidently superior education and culture. His name was Dr. Newel Perry, he was blind, and he had come to see the tenBroek boy whose reputation for independence—if not willfulness—had reached as far as Berkeley. The meeting was a turning point for both of them: the old mathematician found a mind as sharply logical as his own, and the boy found a role model and a mentor for life. For the next school term,

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at the age of nine, Jacobus left home to become a student in residence at the California School for the Blind, under the guidance of the venerable Dr. Perry, better known to all simply as "Doctor."

From the outset the relationship between man and boy was close, continuous, and often contentious. On one hand, as Jacobus recalled, "We were his students, his family, his intimates, his comrades on a thousand battlefields of a social movement. We slept in his house, ate at his table, learned geometry at his desk, walked the streets interminably by his side, moved forward on the strength of his optimism and confidence." On the other hand, there were collisions of will and conflicts of interest: "As a forward youngster of twelve, who made so bold as to address him as 'Doc,' I was once thrown out of a class by Doctor with such a lecture as still rings in my ears. As a somewhat older youngster, still forward but now also bored by the slow pace and the unimaginative techniques of high school, I was expelled by him altogether for incorrigible recalcitrance."³ Luckily for the errant schoolboy, he was soon forgiven by Dr. Perry. With his active support Jacobus moved on to graduate not only from the School for the Blind but also from the public high school in Berkeley, thanks to a new and

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progressive program that enabled a select group of blind students to attend the high school during weekdays and return to their residential school at night.

That unusual opportunity to mingle and compete with the mainstream of sighted teenagers in the regular high school—his personal encounter, so to speak, with a program of school desegregation—was a critical event in Jacobus’s life, another turning point that helped determine the thrust of his future career and, more immediately, gave proof of his capacity to take the heat and stay the course. In the rough-and-tumble of the schoolyard he learned to get along, if not always to go along; more pointedly, he was beginning to learn how to win friends and influence people in the wider world of the sighted.

And he discovered something else about himself, a talent that would serve him well through all the years of his public life. “By the time he entered high school,” his sister Lillian remembered, “he had discovered debating as an extra curricular activity. He sharpened his wits and practiced his technique on all of us, especially his father. He soon became the family speech writer and coach.” Jacobus’s trained memory came to the rescue of another little sister at a critical moment:

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His sister, Ivy, was delivering her eighth grade valedictory address when she was overcome by stage fright. She could not remember the next line. The family stirred with uneasy apprehension. Ivy was about to run from the stage when Chick saved the day by booming out the next three words, "*Let no man!*" Not one of us can remember the rest of that sentence but it probably was, "Let no man be silent because of fear, or for lack of a champion to lend his voice."⁴

Some thirty years after his graduation from the California School for the Blind, Dr. Jacobus tenBroek returned to address a memorial convocation for his former schoolmaster, mentor, and role model. It was especially fitting, he told the gathering, that this event should be held at the historic old school, the same institution to which Newel Perry himself had come as a ten-year-old boy in 1883—a lost and distraught child, not only blind but penniless, "his father dead, his home dissolved."⁵ He had lost his sight and nearly his life as well from an attack of poison oak that caused his eyeballs to swell until they burst, leaving him in a coma for a month. But at the residential school the boy's luck changed for the better, and the groundwork was laid for his career as a leader and teacher of the blind.

As in Jacobus's case, the crucial factor in young Newel's transformation was not the school itself but

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the fortunate presence of a remarkable schoolmaster—Warring Wilkinson, the first principal of the California State School for the Deaf and the Blind (the precursor of the California School for the Blind), who presided over the institution for forty-four years, from 1865 to 1909. Wilkinson was that rare breed of headmaster, as gentlemanly as he was scholarly—an uncommon blend of character traits in any age but especially so in the Victorian epoch of “charities and corrections.” This heavy-handed approach, applied alike to schoolhouses and almshouses, constituted a form of double jeopardy for children unlucky enough to be both penniless and sightless. Wilkinson not only sympathized with his blind students, never merely wards to him; he identified with them, collaborated with them, and believed in them. More particularly, he believed in the potentiality of each child, given a network of support and a base of self-esteem, to lead a normal life in the regular pursuits of the wider world. He was not content with instructing his students in the hoary old “blind trades” of basket weaving, chair caning, broom making, and the like. What Wilkinson dared to envision for these children was nothing less than breaking out of the old straitjackets, building the skills and the confidence for

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living in the competitive world with all its stumbling blocks, and navigating alongside their brothers and sisters in the mainstream of a truly egalitarian society.

In young Newel Perry in particular, this enlightened headmaster, a true disciple of Samuel Gridley Howe, perceived almost unlimited potentiality. Wilkinson saw Perry as a test case to force open the gates of opportunity long rusted shut against the blind: first, the gateway leading outward to integrated schooling in the wider world, as opposed to segregated training in Dickensian asylums; next, the gateway pointing upward to higher education in the great American colleges and universities; and, ultimately, the gateway into the learned professions themselves—the practice of law, the vocation of medicine, the scholarly life of learning and teaching, and the civic career of leadership in the pursuit of a worthy cause.

The first bold step in the campaign to prepare Newel Perry for that day, was to throw open the gates of the residential school and send the ambitious scholar out on his own to Berkeley High School to complete his secondary education in the competitive company of the seeing—the normal—children. It was no small step for either the boy or the schoolmaster; there would have

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been few others besides these two, in the musty institutional atmosphere of the waning century, who might support or even imagine so reckless an act of defiant desegregation in the public schools. But Wilkinson, true to his given name, was not one to shrink from controversy in the drive to secure the educational and civil rights of his blind students. In the course of a single year, through equal parts of perseverance and persuasion, he broke through the barriers of official disapproval and public disbelief; and only a few years later he sat in the audience, beaming with pride, as blind Newel Perry graduated from Berkeley High School.

That was a giant stride in itself, but the push for integration in the classroom was not yet over. Wilkinson and his talented ward, already a wizard in the higher math, now undertook to shake the foundations of the education system at the highest level—the powerful University of California, centered in Berkeley. “Again admission had to be secured over strong resistance,” Jacobus tenBroek recalled: “Again Wilkinson was the pathfinder; Newel his willing and anxious instrument. Wilkinson’s role in Newel’s life as a youth can hardly be overestimated: father, teacher, guide, supporter—in Newel’s own words, ‘dear Governor.’”⁶

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During the next four years, while working his way steadily through the undergraduate curriculum at the university's Berkeley campus, Perry continued to live at the California School for the Blind, the mother institution that was, in tenBroek's words, "not only the school but the home of his boyhood and the foundation of his manhood." He left there following his graduation from college in 1896, thirteen years after he first arrived as a newly blind child; sixteen years later he would make his permanent return, at the age of thirty-nine, to take up a lifelong career as a teacher and leader of the blind.

Those intervening years in Perry's life were a mix of triumphs and frustrations. The accomplishments were numerous and remarkable, the setbacks continuous and debilitating. But there was a singular difference between them. The successes came as the result of his demonstrated ability; the failures were the result of his perceived *disability*. Perry's impressive collection of honors and promotions began following his graduation, when he was awarded a fellowship in the university's mathematics department, a breakthrough that gave an incredulous world the spectacle of a blind scholar brilliantly navigating the graduate curriculum in theoretical mathematics at one of the nation's premier institutions of

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higher learning. The following year he was appointed an assistant in mathematics, again strictly on merit. In 1899 he was elected to the university's academic senate and promoted to instructor in mathematics. Then, following the custom of the day for ambitious, advanced students, Perry took a further independent step into uncharted territory: in 1900 he decided to continue his graduate studies in Europe. He enrolled first at the University of Zurich in Switzerland and later at the prestigious University of Munich in Germany, where in 1901 he was awarded a doctor of philosophy degree in mathematics, with highest honors. He had reached the summit of scholarly achievement.

After receiving his doctoral degree, Perry permitted himself to linger a while on the continent, traveling but still finding time to write an article on mathematics for publication in a learned journal. That *Wanderjahre* in Europe was to be his last carefree fling, not to say his last experience of optimism and self-confidence, for many years. But at the moment he was flush with his academic success on two continents. So it was that young Dr. Perry returned in high spirits to the United States in 1902, landing in New York Harbor with a shipload of hopeful immigrants "yearning to breathe free," none of them more

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talented or blessed with better credentials than he. Jacobus tenBroek later reconstructed the occasion of Perry's homecoming under the incandescent lamp of the Statue of Liberty: "He had about \$80 in capital, a first-class and highly specialized education, and all the physical, mental and personal prerequisites for a productive career, save one: *visual acuity*."⁷

That was enough to doom his prospects. There followed a desperate period of ten long years, from 1902 to 1912, endured in the teeming metropolis of New York City, which he remembered as the worst years of his life. The ambitious young mathematician threw himself into the search for a university teaching post while clinging precariously to life and livelihood by offering private lessons to math students. He had begun the job search by mail while still in Europe finishing his doctorate. Now he pursued the goal in person, on his own native ground; and with his special gifts and dedication it seemed that he must surely succeed. TenBroek, in his memorial tribute, gave a vivid and chilling account of Perry's persistent campaign:

He displayed the most relentless energy. He employed every imaginable technique. He wrote letters in profusion. In 1905, he wrote to 500 institutions of every size and character. He distributed his

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dissertation and published article. He haunted meetings of mathematicians. He visited his friends in the profession. He enlisted the aid of his teachers. He called on everybody and anybody having the remotest connection with his goal.

Everywhere, the outcome was the same. Only the form varied. Some expressed astonishment at what he had accomplished. Some expressed interest. One of these seemed genuine—he had a blind brother-in-law who, he said, was a whiz at math. Some showed indifference, now and then masked behind polite phrases. Some said there were no vacancies. Some said his application would be filed for future reference. . . . Some averred that he probably could succeed in teaching at somebody else’s college. Many said outright that they believed a blind man could not teach mathematics.⁸

And tenBroek added: “Many of these rejections were, of course, perfectly proper. Many were not. Their authors candidly gave the reason as blindness.”

There was no storybook ending to Newel Perry’s ten-year ordeal under the sheltering arm of the Statue of Liberty, no collegial welcome to the halls of higher learning, no professorial embrace anywhere. But the ultimate outcome may have been more richly rewarding, deeply influential, and inspirational than any university career. In 1912 Newel accepted an invitation to come back home—to join the faculty of the California School for the Blind as a teacher of mathematics and director of advanced

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studies. In that familiar circle of friends and colleagues and inquiring minds he would remain for the next thirty-five years, building a life work of historic accomplishment among the blind—a pedagogical masterwork combining the nurturing of young intellects with the launching of an extraordinary social and political movement.

Among the youths whose minds Newel Perry shaped and whose ambitions he galvanized was the stubborn Dutch youngster called Chick. Although generally well-liked by his teachers as well as his fellow students, the tenBroek boy had a problem that derived not from aptitude but from attitude. He was simply too quick a study not to be bored with the classroom pace and the droning monologue of instructors. As one of Jacobus's schoolmates recalled, "He was usually way ahead of them and was often not too easy on them. Many a teacher was heard to say, 'Jacobus is a very bright boy, but he should learn not to be so caustic in his remarks.'" What he needed was intellectual challenge and stimulation; when he could not get that from the schoolroom, he found his own means of searching it out. A boyhood chum, Robert Campbell, recalled an episode that occurred at the start of his own enrollment at the school, when Jacobus was already a veteran student of some years' standing:

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Chick offered to read aloud to me *David Copperfield* in Grade 1 Braille. This was one of our first English class assignments and Chick knew that I was just learning braille and would probably never get through it alone. This was the beginning of several years of enjoyable reading, Chick doing the reading, I the listening. We tackled everything the school library had to offer, spending long hours on weekends and sometimes late into the night hours.⁹

They read and read and read, Campbell remembered—whatever they could find in braille, whenever they could steal the time, and wherever they could search out a quiet niche or corner to huddle in with their ponderous braille volumes.

We would read before the fireplace in our room at old Strauss Hall or before the large fireplace in Garber Park up in the hills behind the school. On one such occasion, Thanksgiving holiday, we started a reading marathon. We checked out all 21 [volumes] in Grade 2 Braille (the first Grade 2 Braille book the school had) of *The Count of Monte Cristo*. Immediately after the evening meal, four of us went up to the park and while Chick began to read, the rest of us built a fire which we kept burning all night. Chick read continuously except for brief stops to warm his hands. We spelled him in the reading sometimes but no longer than necessary, as Chick was the fast reader. We returned to the campus for breakfast and Thanksgiving dinner as well as for most of the other meals. We did secure bag lunches from the kitchen for some meals and for snacks during the long nights.

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Two of the boys gave up on the second night, but Chick and I stuck it out until we finished the book on Sunday morning.¹⁰

That is all there is to this reminiscence of an unusual episode in the lives of four blind students who were fascinated to the point of obsession with the world of language, literature, and human imagination. But there may have been more to the story. This marathon reading and recitation took place on a Thanksgiving weekend, three or four days in all, a feat of endurance for all the boys but especially for Jacobus, the designated reader through the long days and cold nights, with time out only for periodic raids on the school kitchen and more kindling on the outdoor fire. The story, beyond its plain facts, may tell us that young Jacobus arranged this campfire marathon expressly for those students whom he knew had no home or hearth to return to on this traditional American holiday, the family holiday known as Thanksgiving. Jacobus could not provide the families for them, but he could organize the high-jinks of literary adventure and the kind of fellowship to take a young person's mind off the things he or she would be missing most on this fabled family weekend of celebration and reunion—and home.

Another intellectual skill that Jacobus was ready to demonstrate at any opportunity was his phenomenal

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memory. His German class at Berkeley High School was assigned to memorize either a poem or a prose passage from one of the German classics they were then reading. Jacobus thereupon committed to memory the entire text of a narrative poem occupying a whole braille volume of well over one hundred pages. He recited it so well in class that he was chosen to deliver it again before the school's general assembly. As a result of such performances he became known at Berkeley High as “the Orator” (that title is printed beneath his yearbook photograph), and in his final term he was selected to give a major address at the graduation ceremonies.

The Orator

The schoolbook label was an auspicious harbinger for Jacobus tenBroek of a talent for public address and forensic eloquence that in later years—honed and disciplined in the halls of academe and harnessed to the practical agenda of an aggressive social movement—would evolve into an impressive instrument of reason and passion combined, the twin lines of force that were to fuel his parallel vocations of activist scholarship and contemplative leadership.

Following graduation from Berkeley High School as well as from the School for the Blind, Jacobus prepared

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almost as a matter of course to enter the University of California at Berkeley—although that was far from a matter of course even for sighted youths in the 1930s, let alone for the sightless. The young man's natural confidence was supported by a brilliant record at Berkeley High. But now, at the moment of applying to college, he was suddenly and inexplicably denied public aid. Public aid for the blind was a state program that had resulted from Dr. Perry's personal campaign to raise the level of assistance to needy blind youth seeking careers. The very thing the program was expressly intended to do—promote the vocational rehabilitation of needy blind persons—was, in Jacobus's case, abruptly disallowed by its administrators. "The reason was not that my need was not great," Jacobus later wrote. "It was that I intended to pursue a higher education while I was being supported by the state. That was too much for the administrative officials."¹¹ Possibly the refusal of aid was only a smokescreen to hide the real act of rejection—the denial of a blind person's competence and entitlement to seek a college education. Or perhaps it was only standard bureaucratic obfuscation. In any case, it was a potentially devastating blow to Jacobus's aspirations to higher education and a professional

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career. Fortunately, at this critical moment Dr. Perry intervened to supply the financial aid. “Just as Warring Wilkinson had earlier done for him,” Jacobus recalled, “he supplied me with tuition and living expenses out of his own pocket for a semester while we all fought to reverse the decision of the state aid officials.”¹² After a drawn-out court battle, the agency bureaucrats were forced to reverse their arbitrary denial of aid, and Jacobus tenBroek, age twenty-one, emerged victorious from his baptismal trial by law on an issue of welfare reform. If ever there was a clear portent of things to come in a tumultuous life—the courtroom battles, the welfare debates, and in particular the never-ending conflict between the “blindness system” and the blind themselves—that youthful day in court was it.

The undergraduate years at Berkeley, where Jacobus majored in history but also was drawn to political science under the tutelage of Charles Aikin, one of his professors, were a pleasant succession of high marks and academic awards—he graduated with highest honors—disturbed only by the stubborn persistence of prejudice and disbelief regarding the abilities of the blind, not just in the surrounding town but on the sophisticated college campus itself. Not for the first time in his

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young life and certainly not for the last, Jacobus ten-Broek would witness his accomplishments turned upside down, his demonstrations of scholarly ability applauded but strangely unacknowledged. They were, it seemed, a freak occurrence, an accident of nature, the exception that proves the rule.

So it seemed when Jacobus ventured to enroll in the M.A. program of the political science department in the fall of 1934. For now a new stumbling block loomed in his path. When he routinely applied for a position as a teaching assistant, he was just as routinely rejected—on the ground of blindness. It was nothing personal, the senior faculty assured him; they were just following the rules, and Jacobus had failed to meet the minimum requirements of eligibility, one of which (never invoked before) was the possession of sight. But there followed within the department faculty a bitter and protracted debate, abetted by graduate students on both sides, over the question of whether this or any blind scholar could teach a course. How would he or she enforce discipline in the class? How call the roll? How handle questions from the students if he or she could not see their upraised arms? How use the blackboard? How manage at all in the overwhelming dark?

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Finally, through the adroit leadership of Jacobus's mentor, Professor Aikin, a compromise agreement was reached within the political science department: Jacobus tenBroek would teach a single section for one semester without pay. If he should manage that successfully, he would then be granted a two-year teaching assistantship with pay. He passed the test and won the coveted teaching assistant position, which became his sole livelihood. But the job was not easy and was often ugly. In his dogged ascent of the ivory tower, floor by floor, he had to face down the phantoms of aversion and resentment before he could enter the citadel of the classroom. Once more, as in the first grade at the little schoolhouse on the Canadian prairie, the tenBroek boy had to endure the taunts and whispers of his peers and the more polite disbelief of his elders. But the experience itself, the invisible barrier set up for the blind instructor and for him alone, taught him a valuable lesson in what political theorists like to call prudential wisdom. From his ordeal by slander and snicker, he emerged a more seasoned combatant as well as a more resolute scholar. The study of law and politics had been more or less thrust on him; his blindness had made him aware of injustice and discrimination in the cloistered

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halls of ivy as well as on the mean streets outside, while his own academic and legal struggles had made him conversant with the civil rights of due process and equal protection—those rights notoriously withheld from disfavored minorities under the American system of justice. Jacobus tenBroek's future career—his double life of scholarship and social activism—was accurately prefigured in the classroom contests of those collegiate years.

With the completion of his master's degree in political science as well as his successful navigation of the whitewater of apprentice teaching, Jacobus followed his heart and mind and moved up to the School of Law at Boalt Hall, the university's prestigious training ground for attorneys and jurists. This time Jacobus's passage through academe went relatively smoothly, although his very presence as a blind scholar was still an exotic and to some an unsettling event. What distinguished him more clearly from his fellow students during his three-year immersion in the law books was the sheer brilliance of his scholarship. Among other honors he was admitted to the Order of the Coif; still more impressive, he wrote and published five law review articles during his law school years. Those early but meticulously researched writings, primarily on the subject of extrinsic aids in

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constitutional construction, were to have an enduring significance; later they would be retrieved from the stacks by a new generation of scholars and recognized as trailblazing studies in the constitutional interpretation of historic documents.¹³ These writings, together with his book *The Antislavery Origins of the Fourteenth Amendment* (1951), would play a key role in the development of the legal argument that persuaded the U.S. Supreme Court, in *Brown v. Board of Education of Topeka* (1954), to overturn precedent and change the course of history.

The Movement

By the time he had completed his student career at the University of California at Berkeley in 1938, Jacobus tenBroek had acquired both a B.A. and an M.A. in political science and both a L.L.B. and a J.S.D. from Boalt School of Law. He was on the brink of a distinguished academic career as a scholar and teacher, but he was also on the brink of something else, of a very different nature. At this transitional point in his professional career, he was already well embarked on a separate calling—many would call it his true vocation—as the founder and prime mover of a social movement unlike any other, destined within a few years to become

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a national force and bring about a revolutionary transformation. It would come to be known informally as the organized blind movement, and it had struggled to be born during the last years of the nineteenth century.

The precise date of origin of the organized blind movement in America is a matter of some dispute among scholars, depending on the preferred definition of self-organization implicit in the term “organizations of the blind.” If what is meant is “organizations *for* the blind,” then any agency or charity throughout history might claim the honor. If what is intended is “associations *of* the blind,” then the blind guilds of medieval Europe or perhaps even the defensive clusters of blind mendicants in ancient China or classical Greece might qualify. But it seems more plausible and accurate to remove from the equation all the nonblind-managed agencies and bureaus in the field, however venerable or benevolent, and also to relegate the blind-operated guilds of premodern times to the status of forerunners.

The Victorian Age—that extended epoch of commerce and empire, invention and industry, progress and poverty, and also reform movements and Great Awakenings—was an era of tumultuous change that witnessed, among other developments, the spread of

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voluntary associations, the rise of the antislavery movement, the professionalization of public health and medical practices, and the emergence of residential schools and special institutions for the blind. The development of a professional system or network of agencies supervising work with the blind also generated a parallel, non-professional movement made up of associations of blind persons themselves, originally organized as local groups of graduates from the state schools for the blind. One of the first of these alumni associations was the Friedland Union of Philadelphia (auspiciously dubbed the “Freedmens Union”), organized in 1871.¹⁴ Six years later came the New York Blind Aid Association, also made up mainly of sightless members. By the last decade of the century there were a substantial number of such local groups scattered about the country. The independence of these early associations of blind men and women gave them their distinctive character and purpose; although not all were consciously directed toward the goals of equality and self-support, the simple fact of their freedom from the supervision and control of sighted custodians encouraged the growth of forthrightly democratic and egalitarian aspirations. Thus began the awareness of an intrinsic difference—an “invisible wall of separation,”

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so to speak—between organizations *for* and *of* the blind. The distinction was a simple but profound one, and, once acknowledged, it could never be effectively denied or ignored. Organizations for the blind came to be identified as social agencies—charitable or philanthropic, public or private, educational or correctional—whereas organizations of the blind came to be known simply as the self-organized blind.

The pacesetter among the early blind-led groups was the California Alumni Association of Self-Supporting Blind, whose purpose was indicated by its title. Founded by Newel Perry and a handful of visionary colleagues in 1898, expressly to encourage blind men and women “to escape defeatism and to achieve normal membership in society,” the small band of alumni and alumnae evolved over the years into a loose, statewide association of local clubs that was reorganized in 1934 under the name California Council of the Blind. Again it was Dr. Perry who paved the way for the expanded organization by traveling tirelessly up and down the state for ten years, tracking down and signing up as many blind men and women as could be found for membership in the county clubs of adult blind. It was a labor of love and persistence, in what must have seemed a lost cause to most onlookers;

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but if they looked closer they would have noticed something else that was different about this organizing drive. For “Doctor” was never out there on the hustings by himself, not even in the early years of his long campaign. He was accompanied by a cohort of eager young organizers, true believers in the cause, drawn from among his own students at the California School for the Blind and known as “Doctor’s boys.” Among these youthful disciples, *primum inter pares*, was Jacobus tenBroek, then only a few years into his collegiate career at Berkeley.

Jacobus would never forget that adventure in collective action—its experience of solidarity and comradeship, its stress tests of will and dedication, its primer lessons in the strategies of organization and the rhetoric of persuasion—and its prefiguring of the struggles and triumphs of the possible future that lay ahead: the new world of the organized and independent blind. (“O brave new world,” someone once paraphrased Prospero, “that hath such *blind* men and women in it!”) Of course it cannot be said with absolute certainty that those blind schoolboys out on the open road saw themselves as pioneers in a great cause blazing trails of progress and forging paths of glory. But pioneers they were—pathfinders and trailblazers at the

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historic crossroads of a new frontier for the blind, for the first time ever walking alone and marching together.

Years afterward Jacobus tenBroek set down his recollections of this defining experience for his generation of blind students, who turned history around in California under the leadership of Dr. Perry: “We were his students, his family, his intimates, his comrades on a thousand battlefields of a social movement. We slept in his house, ate at his table, learned geometry at his desk, walked the streets interminably by his side, moved forward on the strength of his optimism and confidence.”

“Comrades on a thousand battlefields of a social movement”—they were that and something more. While making their own social history, “Doctor’s boys” were also contributing to California’s broader history during that tumultuous decade of the Great Depression—a history of social movements and voluntary associations, migrant workers and displaced families, newly organized labor unions and equally organized constabularies, nomads and squatters, “wild boys of the road” and armies of the dispossessed. All came to California, exiles from the Dust Bowls of America, from the empty factory towns and the dried-up family farms, traveling up and down the highways, following the

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posters and fliers proclaiming jobs in the fields and orchards beyond. All came to California—the land of milk and honey, the pot of gold at the end of the rainbow, the last frontier, the Golden Gate, El Dorado.

It would come to be known, fabled in song and book and film, as the last great westward migration, driven not by gold this time or even greed but by hunger—an insatiable hunger laced with fear, the hunger of “one-third of a nation, ill-fed, ill-clothed, and ill-housed,” as Franklin D. Roosevelt phrased it. In time that hunger would be relieved through federal-state programs of social security and public assistance, programs substantially shaped and influenced by a new social movement of the organized blind, a nationwide crusade led by a young Californian named Jacobus tenBroek.

Out on the hustings in his adopted and beleaguered state during the Depression, young Jacobus could not have fully foreseen the significance of those desperate years in his own life and career. In time, as a scholar of political history and later as the founder and leader of the organized blind movement, he would come to comprehend the full meaning of that tumultuous decade. But already, on his travels with “Doctor” and in his conversations with blind Californians of all ages and

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backgrounds, he was becoming aware of the human dimension of those hard times, the depth of hunger and the scope of fear felt by ordinary people young and old, light-skinned and dark, seeing and blind. His appraisal of the situation even then, it is fair to guess, was not far different from John Steinbeck's searing portrait of the dispossessed in his acclaimed novel *The Grapes of Wrath* (1939):

The moving, questing people were migrants now. Those families who had lived on a little piece of land, who had lived and died on forty acres, had eaten or starved on the produce of forty acres, had now the whole West to rove in. And they scampered about, looking for work, and the highways were streams of people, and the ditch banks were lines of people. Behind them more were coming. The great highways streamed with moving people. There in the Middle- and Southwest had lived a simple agrarian folk who had not changed with industry. . . . And then suddenly the machines pushed them out and they swarmed on the highways. The movement changed them; the highways, the camps along the road, the fear of hunger and the hunger itself, changed them. The children without dinner changed them; the endless moving changed them. They were migrants.¹⁵

After a decade of aggressive, union-style organizing among their fellow blind up and down the sprawling state—in the depths of the Great Depression, in the

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shadow of the New Deal—Dr. Perry and his troop of young idealists came to believe that the time was ripe to form a more perfect union of their own: a statewide federation of the scattered county-level blind clubs inspired by a visionary ideal, a driving ambition, and a democratic spirit. In 1934 the California Council of the Blind was brought into being almost overnight through an impressive exercise of political leadership, a coup d’etat, that involved some sophisticated and subtle parliamentary maneuvering, all of it masterminded and carried through by young Jacobus tenBroek the year he graduated from college. The strategy was plain enough—to take control of the meeting by packing it with an unanticipated majority of blind members—but the sleight of hand was memorable. For those with the experience to appreciate its artfulness, the episode was a harbinger of what would be recognized in later years as the parliamentary genius of the tenBroek leadership. But it was much more than a successful exercise; it was also a historic moment that brought into being the first statewide democratic association of blind people anywhere—a direct forerunner of the still more revolutionary undertaking, only half a decade later, of the National Federation of the Blind.

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The California Council of the Blind's instrumental role as a precursor association of the newly organizing blind was well understood by both its cofounders: Newel Perry, who became its president, and Jacobus tenBroek, who made it happen. In a 1940 editorial Dr. Perry summed up the irresistible momentum of the evolving countrywide movement during the preceding period: "During the last forty years a growing group consciousness has been noticeable among the blind of our country. Practically every state and large city now has an active organization with a membership composed exclusively of blind persons. These clubs seek to improve the economic conditions of the blind through the enactment of legislation and through other means. *The dream of a national organization is now to be realized.*"¹⁶

And so it was.

IV

SCHOLAR AT LAW

By the summer of 1938 Jacobus tenBroek had reached an impressive plateau along his carefully charted academic career. At the age of twenty-seven he had already earned the B.A. (1934) and M.A. (1935) degrees from the University of California at Berkeley, in history and political science respectively, as well as the L.L.B. (1938) from Boalt School of Law. And he was well on his way to not just one but two doctoral degrees—one in law (J.S.D.) and the other in political science (Ph.D.). However, tenBroek was never to possess that doctorate in political science. Of all the diplomas he sought, this was the only one that perpetually eluded him and also, perhaps for that reason, was the one he coveted most. Almost from the moment when his ambition carried him past the barriers of stigma and stereotype into the undergraduate college at Berkeley, it was political science—the study of government, public law, political philosophy, and

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political behavior—that more and more engaged his interest and challenged his mind. He never seriously considered other disciplines after earning his B.A. and was well embarked on the course to the doctorate under the guidance of Charles Aikin, the brilliant constitutional scholar who was to become his lifelong mentor and friend. At that point, however, the beckoning opportunity of law school—more particularly, the prestigious University of California School of Law at Boalt Hall on the Berkeley campus, with its emphasis on constitutional theory and history as well as the pragmatic tools and weapons of the craft—offered a challenge he could not resist.

TenBroek had no illusions about the outcome of this bold adventure by a blind student, however brightly he might shine in the classroom. Even after graduating with honors from Boalt Law, even after he had acquired not only the L.L.B. (bachelor's) degree but also the J.S.D. (doctoral) degree in law, he hardly dared contemplate an academic career in jurisprudence. Over the years, to be sure, many of the old prejudices against blind students and blind teachers would weaken and fall, one after the other, like dominoes in a row. Eventually, as his publications mounted and his reputation

grew, tenBroek would receive more than his share of invitations from law schools around the country. But in 1938, with the nation still mired in the Great Depression and with the blind population mired even more deeply in their own depression (unemployment among them hovered above 90 percent), he was prepared to hedge his bets. "During the coming year," he wrote to a friend, "I expect to finish my Ph.D. work, acquire a general secondary and junior college teaching credential and complete all but the thesis requirements for a J.S.D." The Ph.D. or the J.S.D. might get him into academia, but the secondary teaching certificate would be a practical backup. And there was still one further option: "Precisely what I anticipate doing with my degrees is somewhat doubtful; but I know what I would like to do. Above all else I would like to get into college teaching work. If, however, I find that to be impossible in the end, I can go down to the old home town, hang out my shingle, and take a fling at the business of practicing law."¹

So the young scholar's mind shuttled back and forth, in the space of a single thought, between the ideal and the real, between the ivory tower and the marketplace. As a graduate student, tenBroek already knew well

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enough what he wanted in the best of all possible worlds, but he also knew what he was more likely to get in this imperfect world. It is noteworthy that in the letter quoted above, and in many more like it concerned with his academic future, there is little or no mention of blindness—as if the physical limitation did not exist for him or was merely an irrelevance. Of course, his omission of the subject was intentional. TenBroek's blindness—what he referred to sardonically as “a lack of visual acuity”—was to remain a persistent factor throughout his career, as it had been all his life, ever since that defining moment in his childhood on the frozen northern wasteland when he had faced down the taunts of his playmates and vowed to himself that he would never settle into the role of the helpless blind man.

If, for Jacobus tenBroek, 1938 was a year of taking stock, 1939 was a year of transition—for him as for the whole globe itself. In that last season of peace between nations, before the lights went out all over the world, he applied to Harvard Law School for a Louis Brandeis Research Fellowship, the award most coveted by law school graduates—and, to the surprise of nearly everyone, including himself, was accepted on the spot. This was more than a transitional moment: it was a

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transforming event for the brash and outsized scholar, raw as a Frisco oyster, altogether lacking in the genteel manners of the Boston Brahmins and unaware of the academic protocol of Harvard Yard. But he did, as it happened, have one conspicuous advantage: he possessed a will as formidable as his intellect.

TenBroek also had no doubt as to what it was in his portfolio, the one thing above all else, that had won him the Brandeis Fellowship. During his three years as a law student at Boalt, in the midst of his course work and law review obligations, he had somehow managed to research and write a set of five remarkable constitutional articles that were published in selected law reviews between 1936 and 1939. Their common topic—“use of extrinsic aids in constitutional construction”—presented a highly original and meticulously argued approach to the interpretation of fundamental documents of government.² The articles not only won TenBroek the Harvard fellowship; they also caught the attention of key members of the law faculty and, in particular, its celebrated dean, James McCauley Landis. Only a couple of years earlier Landis—himself a product of Harvard Law School, a onetime clerk to Justice Louis Brandeis, and twice a professor on the law school

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faculty during the 1930s—had been brought back as dean, but already he was a prominent figure in national politics and public administration. In 1933, during the first great improvisational rapture of the New Deal, President Franklin D. Roosevelt called on him to serve on the Federal Trade Commission and thereafter on the Securities and Exchange Commission, which he chaired for two years before responding to his alma mater's call in 1937.

Dean Landis, a man of no little distinction, was seemingly preoccupied with matters of high state and public policy when tenBroek came to Harvard in the fall of 1939 to assume his fellowship. Nevertheless, Landis turned out to be surprisingly accessible to this newcomer. "The Dean has spotted me," wrote tenBroek in early October, "and is giving me a hell of a workout in his seminar." What he meant was that the dean was trusting him with much of the teaching load: "As a matter of fact, the burden of the whole semester is practically being carried by another Californian and myself." Beyond that, what caught the dean's attention about his new assistant was the originality and incisiveness of his legal scholarship as displayed in the extrinsic aid articles. "I had a talk with Dean Landis shortly after he returned

from trying Harry Bridges," tenBroek wrote in the same letter, "and he evidenced considerable knowledge as to their content; in fact he urged me to complete them rather than to work for the degree [S.J.D.] if it was impossible to do both." This was especially welcome news, he added, "because the Dean is the man who is really in a position to do something for me if I can make him enough of a believer to take affirmative action."³ His estimate of the dean's capability and character was perfectly on target: Landis aggressively took the lead among a supportive law faculty in underwriting tenBroek's search for academic employment.

Although Landis became tenBroek's leading advocate, another person emerged from the faculty ranks to become a vigorous if somewhat inconsistent partisan. This was Thomas Reed Powell, "the big boy in constitutional law," as tenBroek blithely characterized him, "quite the eccentric old devil if ever there was one." Powell came across to his new pupil as "crotchety and crusty and absolutely indifferent to and uninterested in his students." But for all Powell's Scrooge-like behavior, tenBroek found himself intellectually impressed, at least on his professor's better days. "Yet Powell really has the stuff," he wrote to a friend. "On some days his analyses

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are nothing short of brilliant but on other days he [dawdles] along as if he had been drunk the night before which he probably was.”⁴ TenBroek concluded his report with some good news: “The reason this episode became a kind of illusionment is that since that time T.R.P. has demonstrated a willingness to try to help me get a job, and he has renewed my fellowship for next year.” Powell’s assistance eventually led to an offer from the University of Chicago Law School, which trumped a second year of the Brandeis Fellowship at Harvard.

Welcome as the Chicago offer was under the circumstances—it came after months of fruitless forays into the job market by TenBroek and his Harvard boosters—it had strings attached, making the decision difficult. It was only a half-time job and only for a single, nonrenewable year. “Notwithstanding,” Jacobus wrote in a letter, “it is a job and the sensation of having it offered was certainly novel, not to say startling.” What he did not say openly was that it was the only offer out there for an applicant who was undisguisedly blind. And so he accepted the position, if not without some serious misgivings and regrets. “I was all for turning the job down,” he wrote: “If I stayed on at Harvard I would be able to finish my book [on the use of extrinsic aids in constitutional law]. . . .”⁵

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That was the offer's major drawback, one he would have reason to wonder about in the years to come. TenBroek's ambitious work-in-progress, the book on extrinsic aids, comprising some five chapters of material drawn from his law review articles and already heralded by constitutional giants such as Dean Landis, Thomas Powell, and Edward S. Corwin—this precocious and monumental work of scholarship would never be finished, never published as a book, never read by anyone in its intended unity and totality.

TenBroek went off to the University of Chicago Law School in the fall of 1940 with some concerns but also high hopes. Both his Harvard supporters, Landis and Powell, had pressed him to accept the position, even with all its uncertainties. "They both regard the setup as offering an excellent opportunity," he wrote, "and assurances have not been wanting that they will continue to push me for something of a more permanent nature." In fact, the two faculty champions urged him to hold out for other job offers, at least through the summer. Landis "says that he can get a release for me from Chicago without any hard feeling if I can get an offer of a position that has greater promise of permanence." Powell was equally forthcoming: "In proof of his sincerity, since my acceptance of

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the Chicago offer, the Master has recommended me for two other jobs[:] numbers six and seven.”⁶

Clearly, even after he had accepted the Chicago offer, tenBroek was still keeping his options open, even beyond the parameters of academia. “On June 6,” he wrote in a letter, “I also took the civil service examination for Superintendent of the Industrial Home [for the Blind in New York].”⁷ Besides that rather remote professional prospect—remote not because of his blindness but because of his militant politics and philosophy concerning the affairs of the blind—tenBroek was prepared to fall back on the bottom rung of the academic ladder: a high school teaching credential. And, if even that were somehow denied him, he was willing to go back home to California and hang out his own shingle. If he could not teach the law, then, by heaven or by hell he would practice it.

The Cross of Blindness

Jacobus tenBroek’s growing doubts about the prospects of a career in higher education were exacerbated in these uncertain years by the shadowy stigma that he would come to characterize as “the cross of blindness.” The cross that the blind had borne through the ages

was one made not of wood and nails but of myths and superstitions rooted in the deepest lobes of human memory, endlessly repeated and reinterpreted through the centuries, and now hardened into a glutinous tissue of lies and whispers—a very paradigm of prejudice. For tenBroek, now in the vigor of his youth and ambition, the shadow had been his uninvited companion since childhood, lurking like a stowaway in the corners of his mind, but for the most part it had remained in the background, quiescent and nonthreatening. Yet in times of crisis—and now was such a time—the specter arose.

The cross of blindness, as it seemed to tenBroek then, would have to be carried longer and farther. In March 1940, toward the end of his fellowship year at Harvard, he wrote a letter to an old acquaintance and adviser, Dr. Richard S. French, superintendent of the California School for the Blind in Berkeley and author of an authoritative history of blindness, *From Homer to Helen Keller: A Social and Educational Study of the Blind* (1932). Ostensibly tenBroek was writing simply to report on matters of professional interest to this venerable educator of blind youth, but underlying his report were concerns of a more personal and bothersome nature. Since his last writing, he began, “some episodes have occurred

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which I am sure you will find interesting. They cast light both on my particular situation and on the problems of guidance among the blind." He then went straight to the heart of the matter.

Last November a large mid-western university was looking for a man to teach public law. Having read my published articles but knowing nothing else about me, the head of the department in question wrote a letter to the University of California inquiring whether I would be available for the position. Cal. replied that I would and accompanied the answer with a considerable collection of supporting material. However, when the department head learned that I was blind, the deal was off although none of the competing applicants had as good a paper showing.⁸

"This incident," tenBroek observed, "seems to me of particular interest because, although I have been refused other jobs, this was the first instance in which blindness by itself was the determining factor." That may not have been entirely accurate; blindness had been an obvious factor, whether or not decisive, in other rejections he had experienced during these job-hunting years. But he was not writing now, he insisted, merely to recite a sad tale of defeat and woe. On the contrary, he protested, perhaps too emphatically, that his story was not really personal at all. "I am impelled to tell this

story," he declared, "because of its bearing on problems with which you are concerned and not because I was discouraged by it. That was not the case. In fact my job opportunities look quite hopeful." And he went on to point out the backing he had received from his Harvard faculty champions, Dean Landis and Professor Powell, ending with the affirmation that "with the kind of support that I can count on from Cal. and from Harvard my long range chances appear quite good."⁹

But it was his short-range chances, his immediate prospects, that concerned tenBroek at the moment. The crux of his letter to Dr. French turned out to be quite personal after all. "I am interested in having you keep me in mind as Doctor's [Dr. Newel Perry's] successor when and only when he retires by operation of the age limit or by his own wish." He wanted it understood that he was interested in applying for Perry's position only under those particular contingencies. And then he added a surprising note, one of quiet desperation, which must have been especially painful for him to put into words: "Finally, if nothing else is open by the expiration of next year, I will of course be interested in your suggestion of a part-time assistantship to the Director of Advanced Studies."¹⁰ A part-time

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assistantship to his old teacher at the School for the Blind! Not a faculty position in law or political science, not a university professorship of any kind, anywhere, not even an entry-level post as a teacher in a backwater college—just the bottom of the barrel, a half step above temporary manual labor. It must have seemed to TenBroek then, as he wrote those words, that all his plans and projects, his brilliant feats of scholarship, his glittering collection of honors and degrees—all had been only castles in the air, dissolving in the hard cold light of reality into a handful of dust.

TenBroek's disillusionment with the whole idealized enterprise of higher learning, that storied sanctuary of pure reason and academic freedom, only deepened over the course of succeeding months as job opportunities receded even further and his career appeared to be in a permanent limbo. In the fall of that desperate year of 1940, he wrote a letter to Charles Aikin, his mentor from his undergraduate days, virtually giving up on his prospects for a university position in law as well as political science, the two fields of study in which he could claim a scholarly competence. He began by noting what appeared to be a withdrawal of support, or at least a conspicuous hedging, on the part

of Powell, the “Master,” who had been the sometime champion of his cause. It seems that Powell, on being solicited on tenBroek’s behalf, had written a letter to Boalt Law School that in effect damned him with faint praise. In discussing this “bombshell,” tenBroek recalled a premonitory remark of Powell’s that now assumed a more ominous significance. The comment had been made during a conversation “in which he expressed himself as willing to give me a letter of recommendation to any poli. sci. department in the country but that he thought my mind too flexible for law school work.”¹¹ Too flexible? A strange form of a put-down but unmistakably just that. The phrase suggested that his mind might be adequate to the loose constructs and free-wheeling discourse of political science but lacked the discipline for a systematic science of behavior such as jurisprudence.

In the light of this devastating report, tenBroek wrote to Aikin that a drastic “reorientation” of his job-seeking strategy was plainly in order. “For one thing, I should think it is now clear that the possibility of a law school job is . . . completely foreclosed.”¹² In that terse declarative sentence he implicitly abandoned any further attempt to pursue the grand prize of his life’s ambition.

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It was time to move on—or, at least, to move laterally. If the path to teaching in law school was blocked, then he would follow the alternate route leading to that other place of grace—the secular temple of political science. Even the ambivalent Powell, it seemed, was willing to back him in that discipline. But tenBroek had reason to be doubtful of his chances there as well, for he had just recently confronted the rough beast of prejudice at a luncheon carefully arranged to show him off—or, more precisely, arranged for him to show off his strengths in the one academic field where he might be said to enjoy a home court advantage.

“I wrote you,” he confided to Aikin in a letter from his haven at the University of Chicago, “that the Dean had volunteered to arrange a luncheon at which I could meet and talk with Leonard White, acting head of the poli. sci. department here.” All came off as planned, except for one unforeseen variable: White’s simple bigotry. The luncheon “turned out to be a hopeless flop,” he wrote. “It was instantly apparent that blindness was an insuperable obstacle between White and me. He is the kind of fellow who asks others how much sugar I would like in my coffee and whether I would care for a cigar.” That kind of expressive behavior was more than a signal for

any blind luncheon guest; it was a revelation. "As you well know," he added bleakly, "I have never overcome that attitude on the part of a person who really had it and consequently I entertain little hope for a shot at the Chicago poli. sci. department."¹³

But all hope for a political science position was not entirely lost, even then. TenBroek still had an advocate in Malcolm Sharp, a political scientist of stature "who has manifested considerable interest in me and friendliness towards me. He is the fellow who interviewed me at Harvard and he is one of the moving spirits behind the change at Chicago." Plainly tenBroek wanted to believe in the moral integrity as well as the authority of Sharp's interest in him. But his deepening vein of skepticism held him back even from this modest expression of good will. "That interest," he could not help writing, "seems to have originated from the fact that he wrote some articles which he believes completely shatter the position taken by me in my extrinsic aids articles and has persisted on the basis of continuing discussion of other matters." TenBroek nevertheless held his doubts in abeyance and was not deterred by them. "However, during the course of the year I shall do my best to convince him that Powell's judgment was wrong if Powell actually

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expressed that judgment to him." There was one way to convince Sharp of his real abilities, although it carried its own risks. "Tutorial fellows are required to participate in one seminar and one non-legal course. Sharp gives a seminar in the law school on Dewey and Pareto and it looks like it's up to me to register in that."¹⁴

TenBroek did so, and his hopes were apparently fulfilled, for the correspondence shows that Sharp became a vigorous champion of his cause. Sharp led the fight to gain tenBroek a second year of the tutorial fellowship, an honor rarely bestowed by the University of Chicago. That was indeed a reprieve, and in the nick of time, but it was still not a tenure-track position, not a secure academic post. The additional year merely gave him breathing room to spin off more lines of research, add to his roster of graduate degrees, and, most important, continue pursuing the elusive scholarly career. But the dim dawning of the new year of 1941 signified to tenBroek only the futility of his stalled career. The long struggle to advance against the odds, so brilliantly begun and vigorously sustained, had served merely to bring him back to his starting point. The cross of blindness now lay across his shoulders with the weight of the great globe itself. At one especially low moment, writing to a

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skeptical department chairman, tenBroek found himself composing an elaborate defense of his competence merely to manage a class of students. He began with a prudent gesture of appreciation for “the frankness with which you have indicated the departmental doubt arising out of my blindness. . . .” Then he embarked on a carefully worded exposition that could only have appeared to him obvious if not superfluous:

Blindness is a substantial handicap more because of a common misimpression held by sighted persons about it than because of any limitation necessarily resulting from lack of vision. There are, of course, a number of acts which cannot be performed without sight, but they lie within a narrow area of primarily physical activities. None of the tasks normally involved in teaching are within this class. In lecturing or conducting a discussion group, only where there is a personality deficiency or the presentation lags or is colorless does sight become important. As a teaching assistant at California, my classes were composed almost entirely of freshmen and sophomores and never once did I have a disciplinary problem. These classes were handled largely on a discussion basis. Moreover, my teaching experience has shown that blindness does not preclude the use of the usual variety of teaching techniques. In dealing with the subject of proportional representation, I employed four complicated mathematical charts without the slightest difficulty.¹⁵

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“If the foregoing facts do not dissipate your doubt,” he concluded carefully, “they create enough of a case in my favor to justify giving me a chance.” But he was never given that chance. The correspondence that tenBroek was so painstakingly constructing broke down at that point. The abrupt dismissal of his application might well have been the last straw, the final rebuff to that combative spirit that had carried him from the chill of the Alberta frontier to the haven of the two embracing Berkeley campuses: the California School for the Blind and the Boalt School of Law. His faith in himself and his confidence that the demonstration of ability was more powerful than the perception of disability—that in a fair contest, on a level playing field, the voice of reason would prevail over the gossip of unreason—was now being tested.

His restless years in search of a vocation—the four years following his departure from Berkeley in 1938—were never forgotten by Jacobus tenBroek, even during the later successes of his career. The discrimination and discouragement he experienced then were the nadir of his professional life, the worst rejections as a teacher and a scholar he would personally suffer under his cross of blindness. As the new decade began, the focus of all

his professional searches and inquiries remained as it had always been: to look homeward to the Bay Area, to somehow find his way back to the familiar refuge of his college town. The years of struggle and frustration seemed now a wasted effort; the time had come to fold his tent and return to his base. No doubt his long odyssey home appeared to many of his friends and colleagues as a kind of monomania, a fixation. If there was any teaching position for him back there, any position of slightest prospect in the labyrinthine departments and divisions of the University of California at Berkeley, tenBroek was ready to take it with no questions asked. He repeated this refrain over and over in his letters during the four-year hiatus in the academic desert. But in truth there was nothing irrational or quixotic about his quest. It was not simply a matter of nostalgia for the campanile or the balmy climate, although that theme did recur rather wistfully in his letters. What he really felt was more serious and more desperate: if he could not make it *there*, it seemed to him, he would never make it anywhere. For there, on his beloved campus, he had already assembled around him a cadre of peers and colleagues in positions of authority, a supporting network of allies; there, in the college town of Berkeley, he had a

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genuine circle of friends, old classmates; and older mentors from the days of his youth, confidantes whom he could trust and with whom he could let down his guard—that protective outer shell that enabled him, all of his life, to shoulder the cross of blindness.

In the end, tenBroek's quest became a self-fulfilling prophecy. He *willed* it to happen, and finally it did. But the journey home was long and not easy. Offers of employment from UC-Berkeley were made and withdrawn; fair-weather friends declined to stand and be counted in the moment of decision. TenBroek was not granted either of the faculty slots he had especially coveted: teaching law in Boalt Hall or political science in South Hall. At least not yet and not for years to come. The compromise offer he did receive—and accepted on the spot—was an entry-level teaching post in the department of public speaking, a small service-oriented department without a graduate program, devoted largely to training orators and debaters, with a sideline for poets formally designated as the oral interpretation of literature.

This was hardly his heart's desire. But tenBroek immediately recognized it as a promising handhold, if not quite an academic haven. The curriculum of his

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new department, for all its seeming weightlessness, was not uncongenial to his aptitudes and interests. He himself had been a notable member of the college debating team during his undergraduate years, and now in his new post he was assigned to coach the team as an additional specialty. And he was not compelled to teach public speaking *per se*; instead he was to take on something called argumentation, which provided an opening into a long-time interest of his: the history and logic of persuasion and public address. This interest would soon grow into a major public vocation in the context of his alternate career as leader of an extraordinary people's movement—that of the organized blind—which would reshape the landscape of public welfare and civil rights in America.

V

THE MAKING OF A PEOPLE'S MOVEMENT

ON November 15 and 16, 1940, a remarkable revolution took place, all but unnoticed, in Pennsylvania, one of the birthplaces of American Revolution. The National Federation of the Blind, the first countrywide democratic association of blind people in America, was inaugurated during two days of convention at Wilkes-Barre, Pennsylvania, to the accompaniment of a ringing declaration of independence proclaiming the right of the blind to lead the blind—that is, their right to lead themselves. The key speaker at this obscure uprising was Jacobus tenBroek, then a college instructor not yet thirty years old who was about to become the first elected leader of the organized blind movement in the United States. He was addressing not only the handful of convention delegates sitting inconspicuously in a Wilkes-Barre hotel but also a wider audience of bemused citizens around the state, drawn to their radios

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by the peculiarity of this unprecedented public address. The voice of the tall, red-bearded orator, reading effortlessly from his braille text, rang through the hall like the tolling of the Liberty Bell as he spoke directly to his fellow blind Americans:

TO THE BLIND OF THE NATION: The time has come to organize on a national basis!

Individually, we are scattered, ineffective and inarticulate, subject alike to the oppression of the social worker and the arrogance of the government administrator. Collectively, we are the masters of our own future and the successful guardian of our own common interests. Let one speak in the name of many who are prepared to act in his support, let the democratically elected blind representatives of the blind act as spokesmen for all. . . . The inherent justice of our cause and the good will of the public will do the rest.¹

With those ringing words Jacobus tenBroek threw down the gauntlet to the all-powerful agencies and bureaus of the “blindness system”—the institutional custodians of sightless clients, whom they looked on as their lifelong wards. His opening speech struck a note of defiance and determination—*self-determination*, no less—that had never been heard from so thoroughly disabled and discredited a group as this one. But in the

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historic Pennsylvania town of Wilkes-Barre, such rebellious rhetoric had been delivered before in another time and circumstance.

In 1940, Wilkes-Barre, a thriving industrial center with a population of around 75,000, lay peacefully along the east bank of the Susquehanna River, some fifteen miles southwest of Scranton. But in its early years, from the first settlement of the town in 1769 through the revolutionary struggle of the next decade and a half, there was little peace in the valley. In 1778, fearing a British attack, several hundred embattled settlers in the surrounding Wyoming Valley took refuge in a nearby fort from a marauding army of eight hundred British soldiers and Indians. In the carnage that followed, some two-thirds of the settlers were killed. To this day residents of the surrounding area of Luzerne County can recite the bloody details of the incident that became known as the Wyoming Valley Massacre. Following the massacre, for good measure, the attackers burned the settlement to the ground. Then in 1784, the settlement, still struggling to rise from its ashes, was burned down again.²

The town of Wilkes-Barre had a difficult birth. Indeed, the city's pride in its embattled past was dramatically symbolized by the resonant name it found for

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itself. It was named for John Wilkes and Isaac Barre, two remarkable British statesmen of the revolutionary era who stubbornly defended, at great risk to themselves, the rights Thomas Paine had enumerated in *The Rights of Man* (1791) and, more particularly, the rights of the American colonists against the Crown. In their uncompromising defiance, Wilkes and Barre, members of Parliament, were supported in that body by the great Irish statesman Edmund Burke, a staunch champion of conciliation with the colonies, as well as the anonymous pamphleteer “Junius”—but by few other British citizens during the capricious reign of the intermittently mad George III. Barre, originally a Dubliner like Burke, focused the power of his own impressive oratory on what was widely considered the lost cause of the rebellious colonists. Wilkes was even more unyielding in his devotion to the American cause—he was imprisoned several times, banished to France, and expelled from Parliament for his pains—yet he survived these ordeals to become an enduring symbol of resistance to oppression and a stubborn defender of the American Declaration of Independence.³

Although the meager record of the 1940 Wilkes-Barre convention, this upstart rebellion of the blind, contains

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no reference to the American Revolution, some among the Pennsylvania delegation must have been reminded of those earlier champions of liberty as they heard the clarion voice of their own leader issuing a call to arms in a new and urgent struggle for independence. And they may well have pondered another similarity of the two rebellions: the seemingly insurmountable odds against both. In 1776 the American colonies could muster only a ragtag army of ill-trained and ill-equipped yeomen to face the greatest military force in the civilized world. In 1940 the newly organized blind movement could assemble on the floor of its first convention less than a score of dedicated members from a handful of states, pledged to challenge and somehow overcome the concentrated power of another arbitrary governing authority: the "blindness system." Certainly this rebel remnant did not have the look of a national movement or even that of a well-attended Pennsylvania town meeting. In all, seventeen blind men and women were in the hall, representing only seven of the forty-eight states—Pennsylvania, Ohio, Illinois, Missouri, Wisconsin, Minnesota, and California—and a population of half a million blind people in the country as a whole. That was the entire strength of this fledgling federation of the blind.

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What might they have been thinking at that moment, those few blind men and women gathered in the convention hall, unsupported now by sighted guardians and caretakers, on their own at last? They were already walking alone, to be sure—their presence here demonstrated that—but were they also capable of marching together? This feeble remnant lacked almost everything necessary to launch a serious reform movement. First, they lacked numbers, both in membership and public support. Perhaps even worse, they lacked money. There was nothing remotely resembling a treasury, hardly even a checkbook, to carry them beyond a few days. (At one point tenBroek dispatched an urgent letter to Dr. Newel Perry in California urging him to rush one hundred dollars from the California Council of the Blind to defray the convention expenses.) And because they were the first independent organization of blind people nationwide, the members had no reputation or credentials, no lines of credit or cards of identity—in fact, no bona fide history to call their own. All that they had going for them was this uncertain moment at Wilkes-Barre and whatever they might make of it. What then could their objective be? What was their ambition? On that last question, at least, the conventioners were clear

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and unequivocal. As their young president proclaimed in his opening speech, they were here to break their own long silence through the ages, shake off the stigma of the almshouse and asylum, stake their claim to a new social identity, and make real the suddenly possible dream of creating their own history.

Years afterward, the members of this visionary association would find a trenchant phrase to define their mission in the world: "changing what it means to be blind." But at this moment in Wilkes-Barre the pressing objective was to build a solid structural foundation, the scaffolding of a democratic federation secure enough to support their fragile movement through the storms of ridicule and the swamps of disbelief that would surely swirl around it. Plans for the inaugural convention of 1940 had been underway for months, of course, especially in California, where the idea of a nationwide association had first taken form in the minds of Jacobus tenBroek and his childhood mentor, Newel Perry. During the previous decade, tenBroek had cut his political eyeteeth on the hustings of the Golden State with the rest of "Doctor's boys," organizing local clubs of the adult blind into the statewide council that would provide the model for a truly

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national federation. In the months before the Wilkes-Barre convention, tenBroek was in continuous correspondence with interested blind leaders in the seven states and beyond, traveling as far and often as he could from his temporary teaching posts at Harvard University and the University of Chicago. The planning and politicking became more intense than ever in the days just before the convention, as tenBroek sought to assemble a cadre of potential leaders from his untested comrades and companions. Many of the delegates assembled informally on a convention-bound train that traversed several states on its way to Wilkes-Barre. TenBroek and Hazel—his wife, good right hand, and silent partner—“got together with the Illinois, Minnesota and Wisconsin people on the train,” as he wrote to Dr. Perry, “and did a good deal of preliminary work on the problem of organization.” He also noted that the long rail journey helped his own cause as a candidate for the presidency: “Minnesota, apparently taking a hint from the correspondence [with Dr. Perry], started pushing me for president the moment we got on the train.”⁴ The Minnesota push was reassuring but superfluous; on the first day of the convention the delegates quickly elected tenBroek as their

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first president and provided him a slate of officers in tune with his style and his objectives.

The trainload of blind leaders of the blind arrived in Wilkes-Barre on a cold November afternoon, to be met, as tenBroek put it, "by a reception committee which understood the invigorative tendencies of stronger-than-water liquids." That evening the assembled delegates were the guests of the Pennsylvania Federation of the Blind at a dinner attended by more than one hundred local and state dignitaries, according to tenBroek's own estimate. "After a couple of hours of speech-making by local people, including a state senator, a member of the Public Assistance Board, and others of equal notoriety, each of the out-of-staters was given a shot at the very receptive and enthusiastic audience." Three themes in particular, he wrote with conscious hyperbole, dominated all of these speeches: "The havoc wrought by the Social Security Board, the desirability of a national pension, and the unmitigated dastardliness of social workers."⁵ These were the themes that resonated most loudly through the halls and corridors of the convention in the coming days.

The most urgent task facing the delegates was preparing a draft constitution, which was hastily

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accomplished on the second day of the convention during a caucus of the Pennsylvania delegation by an ad hoc group of four delegates plus President tenBroek. This group took its draft to a meeting of all the delegates, a marathon affair that, according to tenBroek, began about 4:00 P.M. "and ended about the same time 12 hours later." That draft constitution, which he had thought to be little more than a stopgap, emphasized that "the purpose of the National Federation of the Blind is to promote the economic and social welfare of the blind."⁶ The typed manuscript was barely a page long and was adopted without substantive changes. To the lasting surprise of its principal architect, it was occasionally amended over the years but has remained unaltered in its philosophy and aspirations for more than a half century.

A Leader Emerges

The collective will of all those who had traveled to the Wilkes-Barre convention to reinvent themselves was strikingly symbolized by the figure of their new commander-in-chief. Both his physical stature and aura of self-confidence were impressive. But from his opening address to "the blind of the nation" at the start of the

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convention, young Dr. tenBroek also displayed a grasp of history and a mastery of ideas uncommon in the congested universe of factional discourse—of “politicking”—inhabited by pressure groups, special interests, and professional lobbyists. This new-style leader displayed a reflective turn of mind as well as of phrase that would distinguish his public addresses and topical papers on the emerging issues of disability, poverty, and civil rights—the many-faceted struggle for equality—during his career as a leader. Those talents were already on display at Wilkes-Barre: the intellectual dexterity and moral passion, the clarity of thought and the grace of eloquence, all of it manifest in his opening speech on the convention stage—and especially so in his forceful summons to “the blind of the nation” to arise from their sheltered workshops and join him on the barricades of self-expression and self-determination. His pronouncement that “the time has come for the blind to organize on a national basis” was more than a rhetorical gesture; in his view it was a thoroughly practical proposition grounded in the historical record of the evolution of welfare aid to the “lame,” the “halt,” and the blind.

Drawing on his own research, which was to undergird his later books—*Hope Deferred: Public Welfare and the*

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Blind (1959) and *The Law of the Poor* (1966)—tenBroek pointed to the gradual evolution of public welfare from the Elizabethan poor laws of the seventeenth century to the Social Security Act of 1935. The old poor law, with its delegation of public responsibility for welfare to the lowest rung of the government ladder—the counties or townships—represented the first articulation, for England and America, of society's legal responsibility for the welfare of its neediest members. "But when, in the course of time," stated tenBroek in his inaugural radio address, "our problems were taken over by the state legislature and executive authorities, the local organizations of the blind had to be associated in a larger group capable of statewide action." Now that era too had passed, giving way to the greatest change ever in the structure of American public welfare: the shift of social responsibility from local and state jurisdictions to the nation as a whole, embodied in the federal powers of Congress and the executive branch. "Now that the national government has entered the field of assistance to the blind, we must again adjust our organizational structure," declared tenBroek. "The time has come to join our state and local blind organizations in a national federation. Only

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by this method can the blind hope to cope with the nationwide difficulties at present besetting us.”⁷

And those difficulties were clear. In 1940, despite the bold new federal programs of social security and public assistance, blind Americans subsisted in a chronic state of destitution, desolation, and despair. “In one of the largest states, California, no more than two hundred blind men and women were (by official estimate) actually at work in normal occupations,” tenBroek claimed. “Thousands upon thousands who were able and willing to work were without jobs, forced to live on public aid grants which in most states were beneath the level of minimum subsistence.” Those few lucky enough to find jobs at all generally eked out a starvation existence, at wages as low as five cents an hour, laboring in sheltered workshops at ancient and obsolescent “blind trades” such as chair caning, basket weaving, and broom making, without hope of moving upward and outward into the open air of regular competitive employment. A major reason why their hope for a normal life remained deferred, if not extinguished, some five years after the launching of the New Deal and the passage of the Social Security Act was that vocational rehabilitation services for the blind remained ineffectual and rudimentary. As

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for education, tenBroek asserted, "In 1940 only a handful of blind youth were attending colleges and universities while for the vast majority of students who graduated from schools of the blind the prospects of a normal life and livelihood were virtually as dismal as they had been a century before—when the annual report of one such school had lamented that 'our graduates have begun to return to us, soliciting employment at our hands.'"⁸

These grim facts were not mere statistics to the blind orator standing at the lectern reciting from his braille text. They were the stuff of his own life experience, the hard truths about the lives and fortunes of blind men and women at the present moment. At the California School for the Blind, tenBroek had become well acquainted with the school's venerable superintendent, Richard S. French, the author of an authoritative history of the blind entitled *From Homer to Helen Keller: A Social and Educational Study of the Blind* (1932). Although Dr. French acknowledged the visionary inspiration of his precursor, Samuel Gridley Howe, who had assumed leadership of the Perkins Institution and transformed it into the first modern school for the blind in America, his own book was animated by a very different spirit: disillusionment with Howe's high ambition and his radical

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faith in the normality and rationality of the blind “as a class.”⁹ A full century after the revolution in education of the blind, which Howe had introduced, the conventional wisdom of the “blindness system” had come full circle, back to the blind alley and its “blind trades.”

All this provided text and context for tenBroek’s radio address on the eve of the Wilkes-Barre convention. It was a strong, effective speech, no matter how many or how few managed to tune in to it. He chastised all the major enemies of the organized blind, particularly the Social Security Board in Washington, D.C. But that lambasting was nothing compared with the new president’s impassioned intensity and the rhetorical eloquence of his inaugural banquet speech on the convention’s last night—the first in a long, unbroken line of presidential addresses over the decades to come, those of Jacobus tenBroek and then those of his future successors in the presidency, Kenneth Jernigan and Marc Maurer. As tenBroek stood at the podium that evening fingering his braille notes and waiting for the applause of his spare but eager audience to subside, he was entirely aware of the historical significance of the occasion—the first ceremonial banquet of the first national gathering of the organized blind held in America.

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The young president had taken pains to fit his message to the occasion. The title of his speech was "Have Our Blind Social Security?" And his answer to that question, predictably, was a resounding nay—not because of any critical flaw in the multiple programs created just five years earlier, through the landmark legislation known as the Social Security Act, but as the result of a calculated betrayal by the governing agency, the Social Security Board. President tenBroek wasted no time in getting to the point of his address, and he minced no words when he got there: "Ladies and gentlemen," he declared, "I come before you tonight, in the first place, to say that so far as the blind are concerned the Social Security Act has not only failed to attain its plainly expressed goals but it has been used as a weapon to compel the states to treat their blind in a more niggardly fashion; and I come before you in the second place to proclaim to the wide world that the reason for this failure and the wielder of this weapon against you has been the Social Security Board at Washington."¹⁰

The text of tenBroek's speech, according to an authoritative history of the organized blind movement, provided "an expert demonstration of [tenBroek's] prowess as a constitutional scholar; and it remains significant . . .

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as a ringing declaration of the Federation's dominant concern during the first decade with the bedrock issues of economic and social security." Equally important, as this account pointed out, was the speaker's unusual delivery and tone of voice along with its revelation of something new. What was notably different was "the style and manner of the organized blind leadership in its dialogue with the world. . . . Here was no trace of the supplicant, let alone of the mendicant; no appeals to pity; no talk of the tragedy of blindness or the permanent dependence of its victims." Nor, what was even more astonishing, "was there any echo of the traditional genuflection and ritual praising of the agency authorities (such as the Social Security Board) who then held over the blind the power of life or death. The note struck by President tenBroek at the outset of his first convention address—that of independence, aggressiveness, and determination—set the tone for the body of presidential speeches to come in the years and decades ahead."¹¹

That tone was already well-known to the Pennsylvanians in the audience at the inaugural convention of the National Federation of the Blind. It was the familiar sound of the Liberty Bell, tolling a new birth of freedom in the historic cradle of liberty.

VI

EQUAL UNDER LAW

ONE day in the late summer of 1953, Jacobus tenBroek received a letter on a matter of uncommon interest, not only to him but also to the nation at large. It came from Thurgood Marshall, at the time chief counsel to the National Association for the Advancement of Colored People and director of its legal and educational fund. It read in its entirety:

Dear Professor tenBroek,

As you know, we are trying to get together as much material as possible for our rearguments of the school segregation cases in the Supreme Court this fall. We have taken full advantage of your book "Antislavery Origins of the Fourteenth Amendment" and many of our research people have been using it.

I expect to be in San Francisco on Friday and Saturday, August 28th and 29th. If you expect to be in Berkeley at that time, I would very much like to come over and talk over with you some of the ideas we have. I would like to do this in order

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to check on some of our conclusions. I assure you I would appreciate very much this opportunity to talk with you, if it can be arranged.

Sincerely,
Thurgood Marshall¹

The meeting that was so keenly anticipated by the hard-traveling Marshall—and scarcely less so by ten-Broek at home in the Berkeley hills—never came about, apparently because of scheduling conflicts. This would have been a memorable encounter: on one side of the table the black trial lawyer and spokesman for a rising social movement about to make history, on the other side the aggressive blind jurist and spokesman for another grassroots movement making its own history. They were similarly imposing figures, both in their mid-forties, men who stood tall physically and figuratively, who were at the peak of their powers and nearing the summit of their shared ambition—to carry forward, each in his own way, the struggle for equality in America and win that struggle. We can only wonder how a meeting of two such minds—two constitutionally attuned and politically engaged intellects running on parallel tracks—might have affected the course of events in America. But although there was no actual encounter

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between the two leaders, other communications during this decisive period in the struggle for civil rights cast light on Jacobus tenBroek's role in the development of the NAACP's winning brief in *Brown v. Board of Education of Topeka* (1954), the landmark decision of the U.S. Supreme Court that reversed a long and shameful history of racial segregation in the public schools—and, by extension, all the public facilities in the land.

The Antislavery and Civil Rights Movement

TenBroek's involvement with the issues underlying that famous civil rights decision, which culminated in his book *The Antislavery Origins of the Fourteenth Amendment* (1951), had begun quietly enough some years earlier, in the course of a research project on the Fourteenth Amendment (1868), which he had undertaken with fellow constitutionalist and frequent collaborator Howard Jay Graham.² The two scholars were energized in their early investigations by a major political study of the period, *An American Dilemma: The Negro Problem and Modern Democracy* (1944), the product of a five-year research project spearheaded and written by the eminent Swedish social scientist Gunnar Myrdal and funded by the Carnegie Corporation. In its multidisciplinary scope and markedly

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independent perspective, the Myrdal study reminded many Americans of an earlier appraisal of their society by another European observer—*Democracy in America* (1835), written by the French traveler and observer Alexis de Tocqueville a century before. Both books emphasized, each in its own time and idiom, the perpetually unresolved issue of black-white relations as the crucial testing ground of America's democratic aspirations, which Myrdal termed "the American Creed." At the outset of their own project, tenBroek and Graham expected it would consist of a single law review article and tentatively planned to title it "The Antislavery Movement and the 'American Dilemma.'" However, tenBroek and Graham jettisoned the Myrdal connection for a more dramatic discovery that was entirely fortuitous but that struck the partners with the force of revelation.

This was the recent Supreme Court case *Screws v. the United States* (1944), which appeared to hold the promise, as tenBroek privately declared at the time, of nothing less than "the constitutional liberation of the Negro race."³ But this heady prospect was not a result of the Court's disposition of the issue—far from it. The case involved a southern sheriff, Screws, who had brutally and publicly beaten to death a black man named Robert Hall while

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a prisoner in custody. The sheriff was subsequently tried in the federal courts under the original Civil Rights Act (1866), passed by Congress just after the Civil War; during the trial he was found guilty, and the case was sent to the Supreme Court on appeal. There *Screws* fully and graphically lived up to its name; almost inexplicably the justices split four different ways and wound up with a majority decision that reversed the lower court finding and actually exonerated Screws on the ground that the prosecutors had failed to prove he had assaulted and killed Hall with the specific intent to deprive him of his civil rights. This extraordinarily contrived solution, which would become known among jurists as the *Screws* precedent, loomed thereafter as a monumental stumbling block in the path of Thurgood Marshall and his young team of lawyers, desperately seeking a persuasive constitutional framework to support their brief to overturn the “separate but equal” doctrine of segregation institutionalized by *Plessy v. Ferguson* (1896).

But tenBroek and Graham saw something very different in the disposition of the *Screws* affair. “This case,” wrote tenBroek to a friend, “raises the question of the meaning of the Fourteenth Amendment—and the most patent fact about it is that after eighty years in

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which the Chinese, the Whites, corporations, business interests and everybody imaginable has got something out of the amendment . . . the Negro for whom it was primarily intended has secured only frustration.”⁴

All that, tenBroek believed, was about to change—or at least the opportunity and legal authority for change, the “constitutional liberation” of African Americans, would be opened up by their new line of research into the meaning of the amendment as revealed through the intent of the framers. “Graham and I,” he wrote, “have dug up a lot of dope on the intended application of the amendment . . . and are now in a position, or will be when we can get around to writing it up, to show some quite revolutionary things. . . .” After detailing the specifics of their findings, tenBroek concluded: “The upshot of all this is that the Federal government has constitutional jurisdiction, whether it wants or can exercise it or not, against lynchings whether in or out of custody, against economic discriminations, against discriminations in hotels, railroads and the like.” And he added this oddly prophetic remark: “We aren’t at all sanguine about the Supreme Court turning tail as soon as our findings are published but they may want to turn tail some day and when they do we will have show[n] them

how it can be done.”⁵ In other words, whenever the U.S. Supreme Court should decide to catch up to the social and racial realities of the mid-twentieth century and jettison the obsolete doctrine of *Plessy v. Ferguson*, the tenBroek-Graham demonstration of the antislavery origins of the Fourteenth Amendment would be at hand to provide the legal method and the constitutional rationale.

But the task was not quite as simple as that. The two collaborators soon discovered that the further they dug into the record, the deeper the hole they seemed to find themselves in. As tenBroek put the matter in a letter, “A hitch in the form of a projection backwards has developed” in the historical research. They had thought that the black population, so long in bondage, were “about [to be] liberated on the basis of what we were able to discover in 1865 and ’66. Then we began to push backwards and got all tangled up in abolitionism from 1830 on.” What they were finding, to their surprise, was that the intent of the congressional framers of the Fourteenth Amendment was not clearly revealed in the official debates and papers issued in the years immediately before the amendment’s passage in 1868, as these documents were couched mostly in abstractions and legalisms. Rather, it was buried like traces of Sutter’s

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gold in the mountainous records of the antislavery movement dating as far back as the 1830s and from as far west as Illinois and Ohio. "It turns out," said tenBroek, "that the clauses of Section One of the Fourteenth Amendment are the product of the antislavery movement centering largely in the western reserve of Ohio and not the lineal descendants through a long line of lawyers from the Magna Charta."⁶ This the partners had discovered because "we have spent a full two months plowing through thirty years of anti-slavery propaganda."

But the effort was well worth it. Their tedious search through the archives had already borne fruit: tenBroek and Graham's thesis was now the antislavery origins of the Fourteenth Amendment, and the work of proving this thesis must be pursued vigorously. And so it was—for a time. The project moved forward at a relatively smooth pace at first, despite the awkward fact that nearly all the work had to be shuttled back and forth through the mail between Berkeley and Los Angeles, where Graham lived. Then the pace became more hurried and impatient—letters were dashed off several times a week, sometimes crossing in the post; urgent messages were rushed off by indulgent spouses at all hours of the day and night to meet the postal deadlines—all the while

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creating between the partners a disturbing atmosphere of tension and frustration, impatience and discord. The worst part was not the tedium or the hurried pace of research and writing but their source material's seemingly willful resistance to giving up its secrets, the bottomless well of the historical archives, the continuous discovery of new leads and novel twists. As months of research turned into years—three, four, and then five years—the worst part was tenBroek and Graham's seeming inability to find the conclusive evidence, the ultimate disclosure, they needed to conclude their endless project. Their research had begun in the fall of 1944, continued through the end of World War II, persisted through the 80th Congress and the advent of the Cold War, and still was not finished by the time of President Harry S. Truman's unlikely election in 1948.

The friction between the two friends and colleagues grew and hardened into irritation and rancor and finally led to the dissolution of the project altogether. But there was another factor in this delicate interpersonal equation that played its own obscure and ironic role in the breakdown of communication and the breakup of the collaboration. Jacobus tenBroek was totally blind; Howard Jay Graham was profoundly deaf. Because of

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this peculiar circumstance—because of the fragility of personal interaction between the two differently disabled collaborators—they did not talk on the telephone and seldom met personally for work sessions or conferences, although they did, for a time, get together once or twice a year for social visits in their respective homes.

Without these additional frustrations, tenBroek and Graham might have brought off their project with reasonable collegiality if not perfect harmony. But eventually the finger-pointing grew personal, and each partner began to attack the other at his most vulnerable point—his handicap. Graham's references to tenBroek's blindness as a hindrance to their work were at first veiled and oblique, a convenient if dubious way of explaining their apparent lack of progress and assigning the blame for it. TenBroek's reference to his collaborator's deafness was entirely open and frank, not to say blunt, but with less apparent rancor. Both men were clearly wounded by these seeming insults and perhaps equally so; but their responses were as different as their personalities. To tenBroek's credit he made reference to his partner's "handicap" only after Graham himself had brought it up as an impediment in their working relationship; he confessed that his deafness had worsened and was demanding more and more of his

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attention. In noting Graham's increasingly frequent bouts of brooding and frustration, which led to outbursts of recrimination against his collaborator, tenBroek could not resist observing that "deeply and psychologically, this trait probably is a result of the terrible isolation which your handicap imposes upon you." Graham responded furiously with a reciprocal charge of blindness-related flaws in tenBroek's character and conduct.

This troubled state of affairs could not continue. And so in 1948, the partners agreed to halt their long private warfare and go their individual ways, taking with them their portions of the intermixed product of five years' work. Graham was the first to publish—two successive law review articles that appeared in 1950⁷; tenBroek followed a year later with his own book, *The Antislavery Origins of the Fourteenth Amendment*. Two years after its publication tenBroek's innovative work of scholarship, said by one historian to have "established his reputation,"⁸ was heavily relied on by Thurgood Marshall in his brief for the NAACP, the winning party in the landmark case of *Brown v. Board of Education*. Although the book was not cited directly in the Supreme Court decision, its influence on the thinking of Chief Justice Earl Warren, who wrote the opinion for the unanimous court, and of

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his eight associate justices became evident in their reliance on “substantive equal protection,” a doctrine widely identified with tenBroek, as well as their implicit acceptance of the concept of “forbidden classification,” invoked as a device to banish race from the courtroom of civil rights as a mere “constitutional irrelevancy.”

Jacobus tenBroek would go on to break new ground in other fields of political and constitutional theory—notably in family law, social welfare, and the “law of the poor.” Already in the early 1950s, however, his contribution to the forces of change associated with the civil rights movement brought his name recognition within those circles of thought and discourse where issues of political science and constitutional theory intersect and sometimes explode into public action. During that postwar decade, tenBroek moved continuously between the hustings and the barricades of social struggle, not only where the rights of the blind and the disabled were at issue and not simply within the incendiary sphere of black Americans’ rights. He also fought for less militant minorities, such as those of Japanese descent, who were still struggling for the basic human rights of membership in the stubbornly resisting society—the American political democracy—of their choice.

VII

CONSTITUTIONAL SURRENDER

IN the months following the surprise attack by Japanese forces on the American naval base at Pearl Harbor on December 7, 1941, a date that President Franklin D. Roosevelt famously proclaimed would “live in infamy,” the United States moved swiftly toward the total mobilization of its manpower and industrial might to wage an all-out international war, the second world war of the twentieth century, against the Axis powers in Europe (Germany and Italy) and in Asia (Japan). The nation moved especially aggressively in Asia to retaliate for Japan’s “dastardly and unprovoked attack” against its once-impregnable naval bastion of the Pacific. The mood of the country was at first supremely confident and optimistic. It would be a “weekend war.” Everyone knew that the near-sighted Japanese pilots could not see well enough to fly their copycat aircraft, and it was widely rumored that when Japanese warships were

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christened they slid quietly into the ocean and sank to the bottom without a trace. The diminutive Japanese were inferior as a race and at the first contact with American troops were sure to break and run. The Allied counterassault would begin any day now—next week or the week after—and would be a rout of the overmatched foe, the “Yellow Peril.” But the American rally did not come then, nor for a long time yet, and the expected rout never occurred. The agonizing weeks and months that followed the outbreak of war witnessed a virtually unbroken succession of defeats for the Allied forces and shocks to American pride. Jacobus tenBroek would later summarize these cataclysmic events:

Before they could recover from the initial shock, West Coast residents were confronted with more bad news. Coincident with the Pearl Harbor attack enemy forces had struck with disastrous effect at Hong Kong, Manila, Thailand, Singapore, Midway, Wake, and Guam. Japanese bombers had at a single blow destroyed the air defenses of Hong Kong, and within a few days occupied Kowloon peninsula and placed the British crown colony in jeopardy. On December 10 the “impregnable” British warships *Repulse* and *Prince of Wales* were sunk by Japanese planes, thus upsetting the balance of naval power in the far Pacific. The little kingdom of Thailand had surrendered on December 8, and the enemy began a swift southward movement through the

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British Malay States toward Singapore. Other Japanese troops landed in the Philippines on December 10 and were converging on Manila. . . . Meanwhile, dispatches which had filtered through censorship suggested that American losses at Pearl Harbor were far worse than at first indicated. It was freely predicted that Alaska and the Pacific Coast itself were next in line for Japanese attack and even attempted invasion.¹

Japanese Americans in Wartime

If the enemy in the distant Pacific was hard to find and harder to defeat, in those early days of war, at least the enemy within was more visible and a great deal more vulnerable. Unlike its European Axis partners, Germany and Italy, Japan was perceived by most Americans through a distinctive racial lens. The term “Yellow Peril” expressed the deeply held image, especially along the coastal states bordering the Pacific, of an exotic race of sword-wielding zealots on the other side of the ocean, alien to the core, the children of Fu Manchu and clansmen of the Black Dragon, dedicated to the extermination of the white-skinned race. But not all the Japanese were on the other side of the world; long ago, allegedly, they had secured an American beachhead—a “fifth column,” to use a phrase borrowed from the Spanish Civil War, consisting of spies, saboteurs, and soldiers in disguise.

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These had stealthily infiltrated the western states and the territory of Hawaii over half a century of immigration and were now, so the rumors ran, heavily concentrated and deeply entrenched next to major military installations, awaiting only a signal from the Imperial Palace to arise en masse, strip away their masks of obsequiousness, and attack the sleeping Yankee dogs.

On the more convenient domestic front, the American response to the threat was immediate and devastating. A decade later, in a comprehensive study of the causes and consequences of this unprecedented wartime evacuation and detention of more than 112,000 Americans of Japanese descent, Jacobus tenBroek summarized the shocking history of America's own concentration camps. It began the day after Pearl Harbor with the selective apprehending and imprisonment of several hundred enemy aliens—Japanese, German, and Italian. Travel restrictions and contraband orders applied to all enemy aliens. Then came curfew, evacuation, and finally detention—the last two applied on a strict racial basis to Japanese Americans only and regardless of citizenship. There were incessant demands for the permanent exclusion of the Japanese minority from the West Coast, a flat prohibition of

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their entry into agriculture or business, and their deportation to Japan after the war. Ways and means of stripping American citizens of Japanese ancestry of their citizenship were widely discussed. State legislatures considered memorials urging Congress to propose a constitutional amendment to that end. The Native Sons of the Golden West, flanked by the American Legion, filed suits in federal courts for the same purpose. Congress amended the Nationality Act (1940) to facilitate the renunciation of Japanese Americans' citizenship. California's attorney general directed much more vigorous prosecution of violations of the Alien Land Law (1913), which prohibited even legal aliens from owning land. The California legislature passed in 1943 and then repassed in 1945 a law prohibiting first "alien Japanese" and then, anticipating that this wording was too specific to be constitutional, "aliens ineligible to citizenship" from commercial fishing in coastal waters.² Step by legal step, the net was tightened around the Japanese Americans living along the Pacific coast, culminating in the mass removal and forcible detention of all Japanese—*only* Japanese—citizens and aliens alike, men and women and children, well over a hundred thousand, from within the vast coastal areas of

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the three westernmost states, from Baja California to the Canadian border of Washington State.

On the face of it, this massive uprooting of an entire minority group, two-thirds of whom were American citizens, raised questions as morally troubling as they were politically charged. "That this was a radical departure from American ideals and principles," tenBroek wrote, "can hardly be challenged. One hundred and twelve thousand persons . . . were uprooted from their businesses, their farms, their homes; they were banished and interned for two and one-half years under guard and behind barbed wire, 'under conditions,' in Judge [William] Denman's words, 'in major respects as degrading as those of a penitentiary and in important respects worse than in any federal penitentiary.'" ³ Even more important, as Supreme Court Justice Robert H. Jackson was to declare in his dissenting opinion in *Korematsu v. United States* (1944), the exclusion order was "one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law." American citizens of Japanese descent, and to some extent Japanese aliens as well, wrote tenBroek, "were sweepingly deprived of their constitutional rights of personal security: the rights to

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move about freely, to live and work where one chooses, to establish and maintain a home; and the right not to be deprived of these rights except upon an individual basis and after charges, notice, hearing, fair trial, and all the procedural requirements of due process of law.”

In addition, there was something distinctive and fundamental in constitutional terms: namely, “the apparently flagrant denial—flagrant because the classification was based solely on race—of the guarantee of equal and nondiscriminatory treatment implicit in the Fifth Amendment.” It was not that racism had been unknown in America before this event—far from it—but Americans had always been profoundly disturbed by such disparity between their foundational creed as reflected in the Bill of Rights (1791) and its sporadic repudiation in outbreaks of hatred and intolerance. And indeed there was something notably different, not only in degree but also in kind, about this latest departure from the democratic ethic: “For the first time in the nation’s history,” tenBroek observed, “race alone became a criterion for protracted mass incarceration of American citizens.”⁴

Half a century afterward, as the public memory of other battlegrounds in that second global conflagration

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faded into such epigraphs as “the last good war” and “the greatest generation,” the recollection of this particular quasi-military action on the home front still lay heavily on American minds and consciences. At the time the nation, to its credit, gave noteworthy expression to its feelings of remorse. In 1989 came an official apology—in the form of a presidential proclamation—to Japanese Americans for the admittedly unjust and prejudicial actions of the government’s exclusion and internment programs. Then came a more concrete token of regret: reparations payments of \$20,000 each to wartime camp detainees or, if deceased, to their survivors.

Many factors contributed to this laudable reversal by the U.S. government. Among them, perhaps not far from the top of the list, was the comprehensive five-year study *Causes and Consequences of the Evacuation of the Japanese Americans in World War II*, underwritten by the University of California in the 1940s, co-written by Jacobus tenBroek and two academic colleagues, Edward Barnhart and Floyd Matson, and published in 1954 as *Prejudice, War, and the Constitution*. Although this volume was not the only published work on the issue or even the first, it was the most comprehensive scholarly appraisal of the subject in its time—a valuation underscored

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when it received the Woodrow Wilson Award of the American Political Science Association in 1955 as the year's best book on the subject of government and democracy. The judgment of one reviewer, writing in the *Annals of the American Academy of Political and Social Science*, might be taken as representative of the critical consensus surrounding the book: "It is likely to stand as the definitive work in its area."⁵

Fourteen years later, in 1968, the tenBroek study gained additional credibility as another generation of college students came of age in another turbulent time of war and rumors of war. The subsequent revival of interest in *Prejudice, War, and the Constitution* grew from a wave of new social and political concerns, the most compelling among which, as the authors recognized in their preface to the third printing, was the "prophetic parallel" in the book's discussion of "the sweeping denial of rights to a 'suspect' minority group in time of emergency":

In times of crisis and emergency, born either of foreign war or domestic riot, the tendency to rely unquestioningly on the power of the police and the authority of the military—indeed to surrender to these guardians every conflicting or discordant claim—is all but irresistible. If the present book, with its detailed documentation of one such historic surrender (by the

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Chief Executive and his cabinet, by the Congress, by the Supreme Court, and by the American people), should in any small degree help to strengthen the capacity for reason under pressure, it will have earned its way.⁶

The warning had been sounded by Justice Jackson in his stinging dissent in *Korematsu*: "The Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. *The principle [now] lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need [italics added].*"⁷

That judicial caveat, issued in 1944 in connection with the Japanese American internment, seemed prophetic indeed in the following decade when ominously familiar signs of agitation against Chinese Americans, for whom the epithet "Yellow Peril" had been coined a century before, resurfaced after Chinese Communist forces in the early 1950s entered the Korean War on the side of North Korea. There were recurrent reports that the old "concentration camps" that once held the Japanese at Manzanar and Tule Lake and elsewhere were being secretly refurbished to contain an expelled population of Chinese Americans. These rumors were sufficient to elicit a solemn

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warning from the director of the American Civil Liberties Union, Roger Baldwin, that the infamous cycle of racial banishment and incarceration could occur at any time: “The laws and the machinery are ready for another day, another war, another emergency, another minority. . . .”⁸

Nor was it only the Japanese and Chinese minorities that might be targeted by the next American pogrom. The authors of *Prejudice, War, and the Constitution*, in their preface to the 1968 printing, took note of a striking coincidence: “A somewhat different point of connection between the World War II incident and the present day arises from the greatly vitalized interest of the nation at large, and of social scientists in particular, with the general issues of civil rights and racial prejudice. It is noteworthy that the present volume—which might be viewed as a comprehensive case history in the politics of prejudice and the withholding of civil rights—was published in the same year as the landmark decision of the U.S. Supreme Court in *Brown v. Board of Education of Topeka*.” As the authors were quick to point out, that coincidence should not be construed to suggest a parallel of any kind between the findings of the Court in these separate situations—far from it. The decision in

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Brown, “an extraordinary departure from the behavior of the Court in the Japanese American cases of the decade before, marked the real beginning of the civil rights movement in its twentieth-century phase.”⁹ In turn, they said, the African American struggle for civil rights had encouraged an interest, especially among youth, in the status of other marginalized groups “outside or beyond the melting pot,” and a whole new generation of students had begun to turn their attention to the issues of prejudice and discrimination faced by diverse minorities, whether racial, ethnic, or cultural. Before long, still more groups of the stigmatized and sidelined were moving into the mainstream, including groups whose differences were traditionally labeled “deviant” or “defective”—the blind, the deaf, the broad spectrum of the disabled, and others. Perhaps, then, it was not wholly coincidental that a blind scholar should write a book on the antislavery origins of the Fourteenth Amendment or undertake a study of the prejudicial treatment of Japanese Americans. Through all his engagements and inquiries, in everything he set his mind to work on, there ran a single strong connecting thread: a vision of equality—not just liberty or security or fraternity—but equality under the law.

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Prejudice, War, and the Constitution

In retrospect it seems remarkable that an ambitious, interdisciplinary examination of the wartime evacuation and resettlement of Japanese Americans, undertaken by a high-powered cohort of social scientists at the Berkeley campus of the University of California, should have been begun even before the evacuation itself took place. In early February 1942, a month or more before the first steps were taken toward the mass removal of Japanese residents from the westernmost states, the faculty team began its work under the leadership of the two original organizers of the project, Charles Aikin, a political scientist, and Dorothy S. Thomas, a sociologist. Other scholars invited aboard in the early days were drawn from anthropology, economics, and law.

Jacobus tenBroek, not yet a faculty member at Berkeley, was not to join the research team until 1948, when the war was well over and the project itself had begun winding down. At that time, with the instrumental help of Aikin, his old mentor, he was asked to take charge of the ambitious project that would become *Prejudice, War, and the Constitution*. It was to be the third and last volume published by the faculty team before it disbanded. The

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other books were related sociological studies: *The Spoilage* (1946), by Dorothy Thomas and Frank Nishimoto, which concentrated on the experience of the Japanese Americans interned in the wartime centers, and *The Salvage* (1952), also by Thomas, which focused on issues facing those who were permitted to leave the centers to resettle in American communities before the main body of internees were released in December 1944. (These companion volumes reflected not only Thomas's sociological interests but also those of her late husband, W. I. Thomas, a pioneer scholar of the immigrant experience, who had been the co-author with Florian Znanieski of *The Polish Peasant in Europe and America* [1918–20], a groundbreaking five-volume study.)

Prejudice, War, and the Constitution, the title agreed on by tenBroek and his collaborators, Edward Barnhart and Floyd Matson, emphasized the tripartite organization of the project. So did the vividly Old Testament resonance of the book's divisional subtitles. Part 1, appropriately headed "Genesis," dealt with the century-long history of anti-Oriental agitation and propaganda, which gave rise to an invidious peacetime stereotype of the Japanese as an "enemy race." Part 2, entitled "Exodus," undertook a detailed administrative study of the

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entire process of mass evacuation and detention of Japanese Americans from early 1942 until the program's termination in December 1944. Part 3, "Leviticus," concentrated on the constitutional consequences of the wartime operation, with particular attention to the Supreme Court's role through a series of historic decisions bearing on exclusion programs aimed at Japanese Americans. The three authors worked together on the book as a whole; but each of them was assigned primary responsibility for one of its parts, as the book's preface stated: "Matson has had primary responsibility for Part I; Barnhart for Part II; and tenBroek for Part III, the Introduction and the Conclusion."¹⁰ That was correct as far as it went, but tenBroek carried a significant added responsibility for the planning and direction of the entire study. Moreover, the vital heart of the book, on which its ultimate reputation would stand or fall, lay indisputably in the four chapters of Part 3, "Leviticus," which dealt with the issues of the Japanese American exclusion and internment raised in the courts with respect to three crucial areas of constitutional law: the war powers of the national government, the equal protection of the laws, and citizenship. The distinctive contribution of *Prejudice, War, and the*

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Constitution was the analysis of these contested judicial issues and their far-reaching political and legal consequences in the third part and in the conclusion, which, like the introduction, was entirely tenBroek's responsibility.

The conclusion is no mere summation of the textual narrative; in both style and substance, it stands in plain contrast to the balance of the text. That contrast is immediately apparent in its opening words.

Viewed in the perspective of a decade, with all the advantages of hindsight and subsequent disclosure, the Japanese American episode of World War II looms as a great and evil blotch upon our national history. The whole vast, harsh, and discriminatory program of uprooting and imprisonment—initiated by the generals, advised, ordered, and supervised by the civilian heads of the War Department, authorized by the President, implemented by Congress, approved by the Supreme Court, and supported by the people—is without parallel in our past and full of ominous forebodings for our future.¹¹

Here, in the space of a short paragraph, tenBroek distilled the book's essential argument and issued a sweeping indictment of the nation's political authorities and its venerated institutions. The internment itself was a great and evil blotch on our history. The responsibility for the whole vast, harsh, and discrim-

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inatory program of uprooting and imprisonment was distributed evenly across the branches of the federal government; in this flagrant episode, the constitutionally separated powers—the executive, legislative, and judicial—collapsed into a unified chorus, augmented by the clamorous voice of the people themselves. It seemed that almost no one, governing or governed, was spared tenBroek's index of culpability. But not everyone was, by the terms of this indictment, equally culpable. As the title of the book's third part, "Leviticus," suggested, tenBroek was predominantly concerned with what he termed the Supreme Court's "constitutional surrender" in the face of wartime crisis and military demand. That was the sin, the greatest of all, that brought shame to the nation.

The internment of Japanese Americans, tenBroek declared, quoting Justice Jackson's dissenting opinion in the *Korematsu* case, embodied one of the most "sweeping and complete deprivations of constitutional rights in the history of this nation." Among other things, he contended, it "destroyed basic and precious rights of personal security," including the right "to move about freely, to live and work where one chooses, to establish and maintain a home; the right not to be deprived of constitutional

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safeguards except upon an individual basis and after charges, notice, hearing, fair trial, and all of the procedural requirements of due process.” But that was not all, that solemn litany of rights and immunities under the due process clause of the Fifth (1791) and Fourteenth (1868) Amendments. The internment also struck at the core of the Bill of Rights as articulated in the First Amendment (1791). It “destroyed, as well,” maintained tenBroek, “basic and precious rights of democratic participation: the right of peaceable assembly to discuss the general welfare and problems of government; the rights of free speech and a free press; the right freely to hear, read, and learn; the rights of petition and remonstrance; the rights of franchise and election, of seeking and holding office; and, not least of all, the right and responsibility to defend one’s native land, if need be with one’s life.”

All that, wrote tenBroek, was what the Japanese American exclusion and internment did—or undid. It was left to the Supreme Court to adjudicate the tangle of issues and pass judgment on the events and the litigations, particularly embodied in the critical cases that came before it—*Hirabayashi v. United States* (1943), *Korematsu v. United States* (1944), and *Ex parte Endo* (1944)—the cases involving three Japanese Americans



1. Jacobus tenBroek



2. Always at the center of action, Jacobus, about age four, holds his younger sister Lillian, flanked by siblings Nickolas and Johanna.



3. A dashing young Jacobus tenBroek (third row, second from the right) attended the 1939 Summer Session on International Law at McGill University, Montreal.



4. The Jacobus tenBroek family sits for a photograph in the large living room of their Berkeley, California, house in 1958. The professor and his wife had three children (left to right): Nicholas, then five; Anna, then ten; and Jacobus (Dutch), then thirteen years old.



5. Anna and Nick tenBroek hold their scooter steady as their father repairs it.



6. Hazel tenBroek reads to her husband in his home office.



7. Surrounded by his law books in his home library, tenBroek types on his braillewriter at his walnut desk.



8. Dr. tenBroek addresses a seminar in 1956.



9. In 1961 Jacobus tenBroek visited Kenneth Jernigan at the Iowa Commission for the Blind in Des Moines. Here the two examine raised-line blueprints.



10. Russell Kletzing speaks at the National Federation of the Blind's silver anniversary convention, held at the Mayflower Hotel, Washington, D.C., in July 1965. Seated at the speakers' table are (left to right) Senator Robert F. Kennedy, Jacobus ten-Broek, and Kenneth Jernigan.



11. Jacobus tenBroek (center, rear) poses with (left to right) Kenneth Jernigan, Russell Kletzing, John Nagle, Congressman John McCormack, and Floyd Matson at the NFB's silver anniversary convention in 1965.



12. On October 30, 1992, more than 150 of Jacobus tenBroek's former students gathered in San Francisco for a testimonial dinner in his honor. As the guests entered the room, they were greeted by this image of their beloved professor.

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among the 112,000 internees who ventured to challenge the government program in its unfolding phases, from curfew through exclusion to incarceration. The Supreme Court was the tribunal of last resort, the highest court of appeal. If this court "had struck down the program," stated tenBroek, "the Japanese American episode would have lived in history as nothing worse than a military blunder." But the Court did not strike down the program; instead, it approved it as constitutional, thereby setting in motion a chain of circumstances and consequences that, as tenBroek observed, were acutely foreseen by Justice Jackson in his dissenting opinion in *Korematsu*:

A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. . . .

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A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image.¹²

That cautionary message of a dissenting Supreme Court justice, uttered in the midst of a great war dedicated to ending tyranny and preserving liberty, struck a resonant chord in the mind and heart of Jacobus ten-Broek as he wrote the final pages of his monumental study of one salient episode in the long history of prejudice, war, and the Constitution. After reciting the Court's specific failures in the Japanese American cases, he closed his argument with these words: ". . . and by this default the United States Supreme Court elevated racism to a constitutional principle." To which he added a single sentence: "In this way did the United States Supreme Court strike a blow at the liberties of us all."

VIII

THE RIGHT TO ORGANIZE

ON a mild summer day in the nation's capital in 1957, the junior senator from Massachusetts rose to request permission to introduce a bill and make a statement in its support. That routine action, no different from similar gestures by lawmakers during every session, might have passed unnoticed except for two unusual circumstances: the stature of the senator and nature of the bill he was about to sponsor.

John Fitzgerald Kennedy, at the age of forty, was already a veteran of the congressional merry-go-round, having served three consecutive terms in the House of Representatives before his election to the Senate in 1952. He had delivered the nominating speech for Adlai Stevenson at the 1956 Democratic convention and then had himself narrowly lost the vice presidential nomination to Estes Kefauver. As a result of these and other well-publicized events,

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including his heroism as commander of a distressed PT boat during World War II and his picture-book marriage in 1953 to the glamorous debutante Jacqueline Bouvier, the conventional wisdom was that young Senator Kennedy was already planning to run for president in 1960.

John F. Kennedy's Bill

Kennedy's political celebrity alone might have been enough to gain the ear of his audience on that June day. But there was another attention getter as well: the unconventional character of the bill itself. In fact, nothing quite like this piece of legislation, formally labeled S. 2411 but soon to be known by all concerned as the Kennedy Bill, had been encountered before in either house of the U.S. Congress. It drew on precedents from other fields, to be sure—notably, the organized labor movement during its historic insurgency under the New Deal as well as the civil rights victory of black Americans, only three years before, in *Brown v. Board of Education of Topeka* (1954). But these were merely analogies, however pertinent. The Kennedy Bill, while it stood resolutely on familiar constitutional ground, was intent on staking out new political and social territory—

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unused rights and ungranted protections—for the half million or more Americans who were blind. Moreover, it did so in blunt defiance of the interlocking network of professional agencies and institutions—the “blindness system,” as it was coming to be called—that blanketed the province of work for the sightless. The Kennedy Bill proclaimed and sought congressional sanction for a constitutional right for blind persons to organize—meaning, in practical terms, the right to form or join independent associations of their own choosing for purposes of collective self-expression—and also, still more to the point, to do so without interference from officials of the blindness system. Here was the rub, the real point of contention that the bill was designed to expose and expound.

On its face the Kennedy Bill was bound to be controversial. It was widely, if not quite uniformly, opposed by the major government agencies involved, such as those in public assistance and vocational rehabilitation, as well as leading private institutions, such as the American Foundation for the Blind and the American Association of Workers for the Blind. The struggle of the recently organized blind for the rights to assemble, to speak for themselves, and to be heard—their civil rights—had been going on openly and aggressively since the founding of

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the National Federation of the Blind in 1940. The lines had long since been drawn in that battle, the opposing forces and conflicting interests well known through a series of challenges and confrontations over the years. By the time the Kennedy Bill emerged in 1957, there was little doubt in the cloakrooms and corridors of federal power that the measure was controversial but also that the odds against its passage were overwhelming.

Why then would the charismatic senator from Massachusetts, already a rising star in his party and a war hero to the public, risk his popular standing and political advantage at such a pivotal moment of his career by championing this lost cause? There was no clear-cut answer to that question, but there were some plausible scenarios. One explanation pointed to the evident sensitivity toward disability issues that Kennedy, much like Franklin D. Roosevelt before him, had come to feel as a result of his own debilitating illness. He suffered from Addison's disease, a massive failure of the adrenal glands resulting in chronic pain and a lifetime of medication, and had just undergone two rounds of corrective surgery. Neither this intractable ailment nor his sister Rosemary's developmental disability was publicly known at the time, but they were grimly real. Whatever other

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considerations may have played a role in Kennedy's decision to take the lead in sponsoring this bill, simultaneously introduced in the House by Congressman Walter S. Baring of Nevada, prominent among them was surely his empathetic connection with this physically disadvantaged and socially devalued minority, only now beginning to find its feet and discover its own voice.¹

But there was something more. When a delegation of agency representatives converged on his senatorial office to urge him to call off his quixotic campaign for the right-to-organize bill, Kennedy turned to one of them, a ranking official of the sheltered workshop industries, and asked him whether he believed that blind workers in his own shops had the right to join independent associations. They might have such a right, the official airily replied, but he would personally fire every one of them who dared exercise it. Kennedy's reaction to this extraordinary admission, according to witnesses, was one of barely concealed anger and renewed determination. After that he never hesitated to defend the unprecedented legislation that would bear his imprimatur.²

Speaking earnestly and emphatically, Kennedy began his address to the Senate that day by recounting the diversity of organizations of the blind throughout the country:

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“Some of these organizations are community groups, some are alumni groups, some are trade and professional groups, some are associations of vending-stand operators, some are organizations of workshop employees.” In many areas, he noted, such local groups had come together to form statewide associations: “Forty-three of these statewide organizations of the blind are now federated into a single nationwide organization, the National Federation of the Blind.” Organizations like this one, stated Kennedy, have as their overriding purpose to provide to blind citizens the means of collective self-expression and self-determination—to furnish a voice to a long-silent minority, a voice strong enough to be heard in the councils of public agencies holding authority over their welfare and well-being. It was especially important “that these views be expressed freely and without interference,” but such efforts by the blind toward self-expression and self-organization had been stubbornly resisted by some agency bureaucrats:

In some communities this freedom that each of our blind citizens should have to join, or not to join, organizations of the blind has been prejudiced by a few professional workers in programs for the blind who have allowed their personal views to be expressed in official action for or against particular organizations

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of the blind. Administrators and workers in welfare programs for the blind possess unusual power to control the lives and influence the conduct of their clients. It is important that our blind citizens be protected against any exercise of this kind of influence or authority to interfere with their freedom of self-expression through organizations of the blind.³

“The bill I am introducing,” Kennedy declared, “would do two things.” First, it would direct the secretary of the Department of Health, Education, and Welfare to “consult and advise with representatives of organizations of the blind in his formulation and administration of programs for the blind” and bring his influence to bear on state agencies to do likewise. Such action would create a legislative recognition not only of the blind’s right to speak but also of their right to be heard. It was this “cognate right,” balancing and completing the right of free expression and representation, that Jacobus tenBroek himself would shortly proclaim as the complementary objective of the right to organize. But for the moment Kennedy was aggressively pursuing the issue as a matter of moral principle and broad social justice but also of immediate concern to the nation.

That urgency derived in large part from a shocking fact that Kennedy had lately become familiar with: that

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in the exercise of their constitutional right to organize, form, and join associations of their own choosing, blind persons were being harassed and threatened by officials of the very agencies designed to serve them. And so the bill's second intent was to protect these blind consumers of public services from their own caregivers and caretakers. "Second," as the young senator put it,

the bill would require that no Federal officer or employee concerned with the administration of programs for the blind shall exert the influence of his office against the right of blind persons to join organizations of the blind; and would require that the Secretary of the Department of Health, Education, and Welfare shall adopt regulations, and condition grants to State and other programs for the blind on terms, so that officers and employees in these programs to which Federal funds are contributed will refrain from exerting the influence of their office against organizations of the blind.⁴

Kennedy concluded his speech with these incisive words: "It is my hope that the problems dealt with in this bill will be made the subject of hearings before the appropriate committee as early as possible and that effective legislation may be enacted without delay."

Kennedy's hope would be partly realized but also partly dashed. The first sign of irresolution by the subcommittee of the House Committee on Education and

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Labor came shortly after the bill's introduction when the anticipated hearings were postponed, for mutual convenience and expediency, until the next congressional session. To many observers this seemed a premonitory signal. But, by fits and starts, the legislation did move forward. In the spring of 1959, two years after the bill's introduction, the House subcommittee held extended hearings—a full week of testimony and argument—on the embattled measure and the issues it raised. Scores of blind men and women, mostly schoolteachers and sheltered shop workers, traveled to Washington, D.C., from all parts of the country to submit their written testimony and, in many cases, deliver it themselves. That was one side of the contested hearings—the side represented predominantly by the National Federation of the Blind and its articulate spokesman, Jacobus tenBroek. On the other side was the awe-inspiring legion of lawyers and bureaucrats dressed in gray flannel, armed with briefcases, and surrounded by aides-de-camp. To the blind people there it seemed as if all the administrative personnel of the Department of Health, Education, and Welfare—the “peacetime Pentagon,” as some called it—had been assembled in the front rows of the Senate chamber. The department's formidable leader, Secretary

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Marion B. Folsom, was flanked by division chiefs from the Office of Vocational Rehabilitation, the Social Security Administration, and its Bureau for Aid to the Blind; these in turn were buttressed by the great nonpublic agencies of the blindness network, including the American Foundation for the Blind, the American Association of Workers for the Blind, and satellite service groups for the blind, such as the sheltered workshop industry and the braille printing houses.

From the outset of the hearings, the lawyers and bureaucrats held the distinct if not decisive advantages of superior expertise as well as home turf. Congress—with the rituals and ceremony of its hearings, the elaborate forensics and dialectics—was their own well-marked territory, their accustomed playground. Nor were these busy overseers and undersecretaries, the meritocracy of the “blindness system,” familiar only with the formal protocols of the game. As a prestigious part of the federal government themselves, specifically of the sprawling executive branch, they were the colleagues, cronies, and collaborators of the members of the legislative branch now impressively assembled alongside them. Together the two intertwined branches of the American federal system would, if undeterred by

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quarrelsome voices from the private sphere—"special interests," such as the organized blind—duly execute their sworn obligation to uphold the Constitution and protect the public welfare as they perceived it from their managerial vantage point. Their combined presence alone was intimidating; their expert testimony would almost surely be decisive. And in the end it was. When the exhausting, week-long hearings were adjourned, despite the volumes of testimony by blind teachers and shop workers and notwithstanding the massively documented evidence and virtually unrefuted arguments of Jacobus tenBroek and his scattering of allies within the "blindness system," the Kennedy-Baring Bill failed to clear the subcommittee in the House. If it had made it to the Senate floor, Kennedy's leadership might have tilted the scales. An open parliamentary encounter might have forced debate on the floor of Congress and broadcast to the nation the powerful testimony of the blind civil rights leader—Jacobus tenBroek, a man in many ways the comrade and colleague of Thurgood Marshall and Martin Luther King Jr. Instead, the bill perished in committee. A face-saving maneuver engineered by Congressman Carl Elliott of Alabama and his subcommittee avoided a direct decision on the issue by

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authorizing substantial funds to study a vaguely conceived “reform” of the public welfare system for the transparent purpose of placating the bill’s dismayed advocates and the entire restless minority of the organized blind.

But the failure of the Kennedy Bill in Congress did not signal an end to blind Americans’ struggle for the rights underlying their stalled legislation: the right to organize independently, the right to speak for themselves, and the right to be heard on issues affecting their welfare. Undeterred by their defeat in Congress, the blind turned homeward to their state legislatures, where they were better known and more directly represented, and in the following years “little Kennedy bills” were introduced in numerous state legislatures and enacted by several. In retrospect, that monumental clash of interests on Capitol Hill was at best a Pyrrhic victory for the old guard of the “blindness system” and at least a moral victory for the swiftly rising movement of the blind themselves. Those lengthy and hard-fought public hearings in the House of Representatives in 1959 proved to be a turning point for the National Federation of the Blind. To the governing agencies themselves, such awkward confrontations with the stubbornly independent blind had become too risky with respect

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to public relations and too costly with respect to time and money to be undertaken lightly. The episodes of harassment and intimidation, once so commonplace in the sheltered workshops and the vending-stand program established by the Randolph-Sheppard Act (1936), which had sought to expand economic opportunities for the blind, diminished as the word went quietly out to the regional offices and local bureaus to cease and desist from further coercive acts. In effect, the long legislative battle ended in a tacit cease-fire, an uneasy truce without a permanent peace, as both sides folded their tents and left the field, more in sorrow than in anger, exhausted rather than exultant.

This was not the end of the struggle of the organized blind and their leader, Jacobus tenBroek, chief spokesman, legal strategist, and orchestrator of the entire campaign. Rather, the episode would prove to be a new beginning, a proud landmark in the history of the movement. This perception had been reinforced in the heat of the battle on Capitol Hill by two leaders, two profiles in courage etched indelibly, side by side, on the consciousness of blind Americans, those who were on the scene in Washington, D.C., as well as the multitude who followed the struggle as it unfolded in the

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pages of *The Braille Monitor* and the mimeographed bulletins that came to be relied on as dispatches from the front. Both these contemporaneous political leaders were still youthful and on the rise, both were men of eloquence and charisma but also of vision, whose greatest work was yet to come—and both were to lose their lives abruptly during the next decade, at the peak of their powers and possibilities. Their actions in 1959 reflected the courage of moral independence and risk taking in public leadership that Kennedy had himself lately analyzed and celebrated in *Profiles in Courage* (1956), the little book on politics that was to win him the Pulitzer Prize. Each of them, in his own way, had put much at risk in undertaking this political lost cause. For the man who would be president, it was the risk of being branded a bleeding-heart liberal recklessly attached to an invisible, powerless minority. For the man who would be the blind leader of the blind, it was the risk of discrediting both the movement he led and the broader mission he pursued. The choice of both men to step into the breach on this issue—the right of the blind to organize and to do so independently and together—was an act of political courage and a deed of lasting honor.

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Robert F. Kennedy's Pledge

In 1965, during the week of Independence Day, the National Federation of the Blind held its silver anniversary convention at the Mayflower Hotel in Washington, D.C. The political symbolism of the event was not lost on the record crowd, including well over one thousand Federationists and more than one hundred senators and congressmen who came to break bread with their constituents. This convention had more than the usual number of memorable moments, including speeches by Vice President Hubert Humphrey, Speaker of the House John McCormack, and other statesmen, but one in particular stood out, both then and for years to come, for those fortunate enough to be in the convention hall that day.

Shortly after nine o'clock on the last morning of the convention, July 9, Senator Robert F. Kennedy strode into the ballroom of the Mayflower Hotel to address the gathering. He had come to receive a presentation to the John F. Kennedy Memorial Library of three bound volumes of testimony and correspondence between the late president and leaders of the blind movement, along with a memorial plaque honoring

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JFK's contributions to the cause of the blind's right to organize. The ballroom was packed in anticipation of Kennedy's appearance, and as he walked briskly into the hall the delegates were already on their feet cheering, many of them moving down the aisles with canes or dogs in hand, their applause rising as the senator approached the speaker's platform, ringed around by officials and dignitaries. But it was not any of these that Kennedy turned to first; in a gracious gesture, he turned to two boys in their early teens standing apart on the platform, Jacobus and Nicholas tenBroek, the sons of the leader of the organized blind. Kennedy shook their hands and spoke with each one quietly. They were only boys, not even voters, but they clearly mattered to Bobby Kennedy.

After receiving the books and the plaque from the Federation's president, as *The Braille Monitor* reported, the senator "stood silently for what seemed long moments, opening one volume after another and swiftly scanning the contents while the warm applause from the audience of around 1,000 persons rose and then slowly died away. When he spoke, it was without the aid of notes or text; he spoke deliberately, softly, but with the familiar Kennedy inflection—and the unmistakable

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Kennedy grace. “It was not so much his physical presence,” as a *Washington Post* reporter put it, “but his voice. Even when he used clichés, a halting, fresh earnestness in his tone broke through.”⁵ The senator began with a warm expression of gratitude to the assembled Federationists for their close support and collaboration over the years with his brother: “I just want to tell you how appreciative and grateful I am for this presentation to the John F. Kennedy Memorial Library,” he said. “As I look over these books with your names in them—the documents on the right of the blind to organize, and then the correspondence that President Kennedy had with some of your officers—it brings back to my mind once again the strong feeling of affection and admiration that President Kennedy had for you and for your efforts—both after he became President, and prior to that time when he was a senator from the state of Massachusetts.” Then he came to the point:

As President Kennedy once said, the blind have a right to organize. He made that effort; he felt that you and those that you represent have the right to live out your lives in dignity and honor: that those who are handicapped, those who are blind, could make great contributions to the United States, could make great contributions to our government, and to industry, and to labor—

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and that that right should be recognized. And he knew that, like any other group, it could be recognized best if those who were so handicapped were able to get together, to fight as a group and as an organization for their future, and for the future of their children. And that is what you have done—and that's why I am happy to be associated with all of you.⁶

At one point in his impromptu address, the senator reverted to a classical reference to underline his meaning: "A Greek philosopher once wrote," he said, "'What joy is there in day that follows day, some swift, some slow, with death the only goal?' What we are interested in—those of you that are here, and those of us who are in the Senate of the United States, who feel strongly about this problem—is to make sure that you can live out your lives making a contribution to society, and live your lives in dignity." Then he shared a recollection of his own that many in his audience received as both a revelation and an inspiration: "I think back to the time when I was Attorney-General," he said. "Two of the best lawyers in the Civil Rights Division, two of the lawyers who did almost more than anyone else to bring rights to all of our citizens, were persons who were blind. It may come as a surprise to many people in the United States that the man in charge of surveying and

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studying the records within the Civil Rights Division—records that have to be so carefully appraised—that all this was done under the direction and control of a man who is blind.”

“So I know from personal experience,” Kennedy declared, “what kind of a contribution those who are blind can make—what a difference they can make in a department of government, what a difference they can make in an agency, what a difference they can really make in industry and labor. So I join with you,” he said in conclusion, “first in thanking you for your recognition of President Kennedy’s interest in you and your organization. And I also say that that interest is not ended: that this is a recognition of the past because of what we intend to accomplish in the future. And in that effort, in what you are trying to do—both as individuals and as officers of this organization—I want to pledge to you the help and assistance of the junior senator from the state of New York. Thank you very much.”⁷

His final words were followed by a moment of silence that gave way to a standing ovation—not just standing, indeed, but marching. It seemed as if the entire audience was moving toward the podium with a

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common impulse, hands outstretched to touch the charismatic figure now looming above them. “Kennedy leaned across the table and reached out with both arms into the forest of hands,” reported the *Post*. “He grasped two hands at a time. ‘How do you do, nice to see you,’ he said repeatedly. A rough line formed along the table. Kennedy autographed name cards, taking less than three seconds for each autograph. ‘You’ve made my trip to Washington wonderful. I’ll be happy the rest of my life,’ one woman said. ‘Thank you very much,’ Kennedy said.” After several minutes of autographing and handshaking, he moved gently to leave the clustered group around him, walking slowly out of the auditorium into the main hall of the hotel and toward the street, “an aide beside him carrying the records and the plaque, a crowd of people with canes and dogs strung out behind.” One last graphic image was captured by the eye of the *Washington Post* reporter: “Kennedy walked out into the shade and sunlight of De Sales Street. . . . He got into a red convertible with three aides. In the back there were a baby carriage, a yellow sand pail, a toy sports car, and a golf ball.”⁸

The struggle of the blind for the right to organize—the fight to organize, as some were calling it—had

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begun with the birth of the National Federation of the Blind in 1940, a quarter century earlier. It would endure in one form or another for a quarter century to come. But it would never again experience the sustained virulence, the uncompromising opposition, that it did during the Federation's first two decades. That drawn-out war of attrition, pitting the ascendant movement of the blind against the entrenched powers of the "blindness system," waned noticeably in later years as the struggle took its toll on both sides. But it was, undeniably, the blindness system that blinked first. And it was, no less certainly, the intervention of two steadfast friends of the organized blind that shifted the battle's momentum at two critical junctures: first, the introduction of the Kennedy-Baring Bill in 1957 by Senator John F. Kennedy of Massachusetts and, second, the pledge of Senator Robert F. Kennedy of New York at the Federation's 1965 anniversary convention. Both men kept the faith as long as they were to live, but in both cases that was not long enough. We hardly knew them. And so the nation, still remembering in a new century, can only wonder what further contributions to the struggle for equality and civil rights these two charismatic leaders might have made.

IX

TENBROEK FOR THE DEFENSE

DURING his alternating careers as an impassioned advocate and a dispassionate scholar, Jacobus tenBroek championed the causes of more than a few groups whom he regarded as outcasts of American society. Foremost among them, of course, were the blind, the one minority group in which he himself held full and unchallenged membership. Then came, in no particular order, the broader category of the physically disabled; the African Americans embroiled in the struggle for civil rights; the Japanese Americans caught in a wartime backlash of exclusion and internment; the 1960s counterculture of college-age youth protesting another war and another custodial authority; the welfare children and their families, whom he brought together within the Welfare Rights Organization; and finally the largest minority of them all—the vast underclass of the American poor.

The Law of the Poor

TenBroek's lifelong concern with the issue of poverty began, no doubt, with the hardships of his own childhood on the remote frontier of the Canadian northwest. He had known hunger then, as an unshakable presence, even before he had known blindness. (In his adult life the family larder would be stocked reassuringly with meats and other comestibles crammed into massive freezers; there were slabs of red beef on the table daily, not just for dinner but for all three of the family meals.) In his maturity as a scholar he devised a more objective index to the problem of poverty, one that would constitute a major theme in his writing and eventually produce a trailblazing political and constitutional theory. He was to call it the law of the poor.

Although this novel theory of the dual system of family and welfare law was foreshadowed here and there in tenBroek's earlier writings, it first appeared in complete form in a three-part article entitled "California's Dual System of Family Law: Its Origins, Development, and Present Status,"¹ published in the *Stanford Law Review* in 1964 and 1965. In 1971, in response to

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scholars' demand for a more accessible version, the study was published in book form under a slightly different title, *Family Law and the Poor*, edited by Joel F. Handler. Meanwhile, having caught the attention of legal scholars and political scientists, the work spawned a volume of critical essays, *The Law of the Poor*, edited by tenBroek and the student editors of the *California Law Review*, which represented the proceedings of a three-day symposium of twenty-five legal scholars held at the University of California at Berkeley in the spring of 1966.²

The law of the poor, in tenBroek's massively detailed reconstruction, came into being at the outset of the modern era with the enactment of the Elizabethan poor laws (1598 and 1601) in England, the first laws to promulgate the doctrine of public responsibility for the care and shelter of the indigent poor. In one sense this assumption of a societal obligation for the welfare of all those unable to fend for themselves represented a giant step forward for social consciousness and conscience; the nation would thenceforth take care of its own, in some manner at least, rather than abandon them to the uncertain mercies of private charities, such as the medieval church. But there was a qualification

on which the whole Elizabethan system was predicated: the poor laws were to be administered entirely at the local level, in the parishes or boroughs. This meant that the total costs of welfare would be shouldered at the grassroots by the loyal subjects of the Queen. This in turn meant, as tenBroek argued, that the poor law would be carried out not in the interest of the destitute, for whom it was ostensibly intended, but in the interest of the community as a whole, the more comfortable majority who were obliged to pay the bills. The chief function of the poor law, in short, was to protect the public purse. From that point on there were two separate and distinct structures of family law in England, one for the poor and the one for the rest of society—a dual system of law that erected, in another of tenBroek's trenchant phrases, a "wall of separation" between the classes. Moreover, that invisible wall, as he went on to demonstrate, was to survive the following centuries of social change, including its transatlantic crossing and reproduction within the colonies of the New World, and remain essentially unaltered and intact, at the sad heart of the welfare system, to the present day. TenBroek summarized this duality:

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Thus we have two systems of family law [in America]: different in origin, different in history, different in substantive provisions, different in administration, different in orientation and outlook. One is public, the other private. One deals with expenditure and conservation of public funds and is heavily political and measurably penal. The other deals with the distribution of family funds, focuses on the rights and responsibilities of family members, and is civil, nonpolitical, and less penal. One is for underprivileged and deprived families; the other is for the more comfortable and fortunate.³

And then tenBroek, writing only a few years after *Brown v. Board of Education of Topeka* (1954), asked a pointed question: "In the context of family law, no less than in school racial segregation, one might ask whether 'separate' is not 'inherently unequal,' generating among aid recipients 'a feeling of inferiority as to their status in the community that may affect their hearts and minds in ways unlikely ever to be undone.'" ⁴ With this pertinent inquiry, echoing the exact language of Chief Justice Earl Warren's opinion on behalf of a unanimous Supreme Court in *Brown*, tenBroek left no doubt as to the ultimate purpose of his study. His question was first posed in the introductory pages of the work; several hundred pages later, in its concluding paragraphs, he returned to the same query to reemphasize the political

and constitutional solution—the final victory—that he envisioned for his theory. In his own vivid phrase, it was to tear down the wall of separation, abolish the dual system in welfare and family law, and do so by the very means that had already wrought a revolution in civil rights as embodied in the school desegregation cases. There was no such thing as “separate but equal”; there was only separate and *unequal*.

All his life Jacobus tenBroek, as Joel Handler observed, “was an optimist.” For him the cup of equality, although it had not yet run over, was demonstrably half full. In the conclusion to his comprehensive study of family law and the poor, he ventured where few if any constitutional scholars had gone before. Despite the grim evidence of his own research exposing four hundred years of appalling discrimination against the poor in Britain and America, he could still point to the appearance of “a new spirit in constitutional law” manifesting “positive signs of its future potential.” TenBroek saw this progress taking place in two separate lines of judicial decision making: (1) upholding the right of poor defendants to appeal decisions wherever others may do so, without incurring any expense; and (2) maintaining their right to obtain the services of an attorney, free of charge where necessary. “There can be no

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equal justice, the Court now holds, where the kind of trial a man gets depends on the amount of money he has.”⁵ TenBroek went on to point out the connection between public welfare and public education as represented in *Brown v. Board of Education*. “The issue in that case was over the arbitrary criterion of race used as a basis of segregation of the public schools. Is poverty a less arbitrary criterion when used as a basis of segregation in family law?”⁶ Finally, to make his point unmistakably clear, he turned to “the unexcelled rhetoric” of Justice Robert H. Jackson in *Edwards v. California* (1941):

Does “indigence” as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrant its restriction? We should say now, and in no uncertain terms, that a man’s mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. “Indigence” in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color.⁷

“Pessimistically,” wrote tenBroek, “it can be observed that this was a dissenting view in 1941. Optimistically, however, it was at least a minority view—marked judicial progress in the century since *Miln* [*New York v. Miln*

(1837)].” He then concluded his book-length study on the law of the poor and its possible future with an extended example of his own rhetoric, scarcely less impressive than that of Jackson himself:

When “the mere state of being without funds is a neutral fact—constitutionally an irrelevance”; when classifications based on poverty and handicap are measured by equal protection standards of constitutional purpose and proper classification; when constitutional rights cannot be sacrificed as a condition of granting public assistance; when law enforcement and penal intrusions into the law of welfare are fully restrained by the fourth, fifth, and fourteenth amendments; when free movement is recognized as a constitutional right forbidding residence restrictions in welfare; when the highest court in the land as well as the highest court in California see responsibility of relatives provisions as arbitrary and discriminatory taxation; when welfare categories and constitutional classifications coincide; when the granting and withholding of assistance and the variation of requirements among and between programs are subjected to due process and equal protection norms; when a presumption of competence and responsibility of clients becomes a welfare counterpart of the criminal law presumption of innocence—when these things happen, then indeed will the law of the poor feel the full impact of the pronouncement that “separate” is “inherently unequal,” generating among aid recipients “a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”

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Until that time, however, California's separate, different, and unequal system of family law of the poor will continue in force basically in the form in which Henry VIII and Elizabeth I gave it to England and the English-speaking world.⁸

That sweeping summary of the harsh truth and consequences—and eventual demise—of the dual system of family and welfare law, and thus of its “separate, different, and unequal” law of the poor, might stand almost as fittingly as a succinct statement of the major themes of Jacobus tenBroek's own life and work in the world. There they are in a single complex and declarative sentence, one after the other, linked together by the common thread of equality (or the absence of it). There is the double reference to “poverty and handicap”; the direct naming of public assistance; the indictment of “law enforcement and penal intrusions” into the aid programs for the blind and disabled as well as for families with dependent children; the specification of “free movement” and its antithesis of residence restrictions in all the categorical aid programs; the comparable injustice of relatives' responsibility in public assistance; and so on. The deep interconnection of all these restrictions and restraints imposed by law down through the centuries on the innumerable, disorganized flocks of the “lame,” the “halt,” and the blind—all those

faceless figures huddled together in the dark corners of indifferent cities, all the scattered tribes of exiles and outcasts, the defiled and despised, the shunned and stigmatized, pariahs and untouchables, scavengers and bottom dwellers—all are invoked and implicated in the cumulative clauses of tenBroek's peroration. They represent, these displaced people, through their shifting shapes in the contemporary landscape, both the subjects of tenBroek's scholarship and the companions of his activist reform missions. From his teenage pilgrimages to organize the scattered enclaves of the blind on the back roads and bloodied fields of Depression California in the company of "Doctor's boys"—Doctor's blind boys—until the day of his death in the shadow of the tolling campanile on his beloved Berkeley campus, he was an unofficial counsel for the defense on behalf of all these. For some—the blind, the welfare families, the legions of the poor—he was the prime mover in their collective struggles up from the ghettos and the dirt farms; in other instances—those relating to free speech, academic freedom, civil rights—he was a trusted adviser and advocate in the pursuit of simple justice, justice for causes that were sometimes lost but never abandoned. He was a leader for all seasons.

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A Loyalty Oath and Academic Freedom

The meridian year of the twentieth century, 1950, marked a pivotal moment in the career of Jacobus tenBroek on more than one battlefield of his personal struggle for equality and civil rights. Within the National Federation of the Blind, as its founding president, he was poised to lead an invigorated movement into its second decade of social change, through a time of troubles characterized by a surge of internal growth and an equal and opposite force of external resistance. At the University of California at Berkeley, meanwhile, as an associate professor in the department of speech, tenBroek was about to become embroiled in a struggle between power and principle—the power of the University of California’s Board of Regents and the principle of academic freedom—in the course of which he would earn a reputation on the Berkeley campus as a fierce champion of the underdog, whether a beleaguered faculty or an upstart student body, whether in the cloistered setting of the academic senate or on a soapbox at Sather Gate. Over the next two decades, the last and best years of his life, it would be, again and again, tenBroek for the defense.

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During that period tenBroek faced two critical challenges to his developing reputation as a faculty leader and spokesman. The first, which occurred during the notorious “Year of the Oath,” roughly coterminous with the academic year 1949–50, was an abrupt and unprecedented confrontation between the university’s regents, the official governing board of the statewide university system, and the university’s faculty. The tenured and tenure-track faculty, numbering four thousand, were physically spread out over eight campuses up and down the state; most participated in the academic senate, which was formally divided into northern and southern divisions. Throughout the drawn-out controversy, which reached a peak of hostility during that first demoralized year and continued to fester unresolved and unreconciled for years afterward, intramural battles over issues of free speech and academic freedom took place within the northern division of the faculty senate, centered in Berkeley, traditionally the more liberal of the two divisions.

Another factor made the contest unusual if not unprecedented in the annals of campus unrest at Berkeley: it was the university faculty—not the student body, for once—that was the target of official

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displeasure and the object of official censure and punitive sanction. Even more unusual, the source of that official chastisement came not from the university administration, represented by President Robert Gordon Sproul and his white-collar army of deans and provosts, or from the state political establishment, personified by Earl Warren, the Republican governor. The attack came instead from the university's board of regents, generally regarded as a rather prudent and circumspect body of faceless managers who supervised fiduciary affairs and advised, in a modest way, the state governor and the university president, these two being coexecutors of the public trust in what Thorstein Veblen had long ago dissected sardonically as "the Higher Learning in America."

The gauntlet thrown down by the regents in the summer of 1949 was a loyalty oath abruptly imposed on the university faculty and staff as a condition of their employment. This unprecedented ultimatum was in addition to the standard constitutional oath, specified in the constitution of the State of California, article 20, section 3, which had been in effect for decades without challenge and which read as follows: "I do solemnly swear [or affirm] that I will support the Constitution of

the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of my office according to the best of my ability." To this would now be added the vow, passed by the board of regents on June 24, 1949: "I am not a member of the Communist Party, or under any oath, or a party to any agreement, or under any commitment that is in conflict with my obligations under this oath."⁹

That terse declaration remained the official version of the loyalty oath for the duration of the controversy between the faculty and the regents, although other versions, more or less oppressive, were proposed by both camps along the way. In the end the regents' oath was supplanted altogether by a preemptive measure of the state legislature known as the Levering oath, named after the bill's sponsor, Assemblyman Harold Levering. Yet another version of the original anti-Communist disclaimer, this one for the first time applied to *all* public employees including, of course, the faculty of the state university. The Levering oath read as follows in its entirety:

I, _____, do solemnly swear [or affirm] that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign

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and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

And I do swear [or affirm] that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or the State of California by force or violence or other unlawful means; and within the five years immediately preceding the taking of this oath [or affirmation] I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or the State of California by force of violence or other unlawful means except as follows: _____ [if no affiliations, write in the words, "no exception"] and that during such time as I am a member or employee of the _____ [name of public agency] I will not advocate or become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means.¹⁰

The Levering oath became the final and permanent formulation of the vow that such higher authorities as the governor (briefly), the board of regents, and ultimately the state legislature sought to impose on the

university faculty. Merely to recite the litany of powerful interests arrayed against a divided faculty in the successive stages of this uneven contest is to anticipate its conclusion: the ultimate collapse of faculty resistance. But another, more powerful force worked against the faculty—the Korean War, which broke out during the academic year 1949–50. It carried with it a zealous patriotic fervor and an inquisitorial mindset, soon to be popularly identified with an ambitious senator from Wisconsin named Joseph R. McCarthy, and a suspect form of public behavior already notoriously known as “un-American activities.” Only then, in 1952, did the California legislature, responding to the belligerent mood of Congress and public opinion, move to enact the Levering loyalty oath. All of a sudden it was endgame. As one historian of the episode summed up: “The protracted, hostile, and futile struggle had run its course at last.”¹¹

The loyalty oath conflict was no mere tempest in a teapot. At issue were important questions of authority and power within the university and still more fundamental issues of academic freedom for the statewide community of scholars whose time-honored entitlements—privileges and immunities, rights and responsibilities—more closely resembled England’s unwritten

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constitution than the United States's written one. The ambiguity, uncertainty, and controversy surrounding the loyalty oath and the issue of academic freedom captured the attention of constitutional scholars within the faculty, specifically Jacobus tenBroek, then an associate professor of speech, whose latest publication, published at almost the same moment as the outbreak of the oath conflict, was a law review article entitled "The Equal Protection of the Laws." From the beginning, tenBroek played a leading role in the policy sessions of the academic senate, in the committee on privilege and tenure, and in various ad hoc groups concerned with faculty proclamations and negotiations. That he was sought out, again and again, by his peers on the university faculty was a measure of their esteem for this obscure scholar, not yet a full professor and only recently tenured. Before many months of the oath controversy had passed, tenBroek's reputation was significantly and permanently enhanced.

But this is not to say that his aggressive style of advocacy and argument was universally approved, let alone applauded, by all his colleagues. TenBroek was never really comfortable in the role of the diplomat or salesman; he was not by nature one of those who glide

through life on the strength of a smile and a handshake, and his colleagues knew that he did not suffer fools gladly. In public performance and disputation, he might come across as brusque, high-handed, dismissive, dogmatic, or distantly aloof. Those who opposed his ends but could not refute them often focused their critique on his means—an intimidating style, an aggressive personality—where he might be more vulnerable to criticism. The superheated loyalty oath controversy seemed to provide evidence for such negative perceptions of tenBroek in his newly prominent role as a public citizen. Once he stuck his neck out, rather farther than usual, and took considerable heat for it. In response to the regents' peremptory oath, tenBroek volunteered a "statement of principles" on behalf of the faculty, which he presented as a resolution at a meeting of the northern section of the academic senate on November 7. During the meeting, full of speeches that he described as "the longest and most arduous held on the oath," the tenBroek resolution was at first rejected by a voice vote, followed by a count of hands, and then partially adopted in a separate action taken later that same evening. The approved portion of his resolution, comprising its first three paragraphs, was thenceforth

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regarded as an official "declaration of principles" of the northern academic senate, and the committee on conference with the regents was directed to present it to the board as such.

The text of tenBroek's statement follows:

Because the State of California is a community of free men it values the spirit of free inquiry and encourages the vigorous search for truth. It therefore cherishes and supports a University. The People of the State in establishing their University have placed it under the legal authority of a Board of Regents, entrusting to them a task of great delicacy recognizing that the fostering of a University's life requires an administration sensitive and restrained in internal affairs and vigorous and determined in protecting the University from external political or partisan pressures. The purpose and spirit expressed in the establishment of the University guides, defines, and limits the exercise of administrative power.

The public responsibility of the Regents is to create and maintain the conditions necessary to the University's life. The power of the Regents must accordingly be exercised not only with due regard for those principles of freedom of thought and association which constitutionally limit the power of all public officials but also with deep respect for the essential nature of a University as an institution peculiarly dedicated to freedom of mind.

A University has its own Constitution expressive of its purposes, its functions and its obligations. That constitution, cherished under the name of "Academic Freedom," is a system of government which cannot be violated without frustrating the

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purpose for which Universities are created. The principles of academic freedom are the rules and procedures by which the academic community is protected against any attempt, however well intentioned, to hinder it in the pursuit of truth or to protect it from error. These principles, including the principle of Tenure, provide not only a high degree of independence for individuals of attested competence but also a significant degree of faculty self-government. Experience has demonstrated that the security of the former depends upon the strength of the latter. The area of faculty self-government is, of course, limited. But it includes full faculty participation in the making of decisions affecting the conditions crucial to the work of teaching and research and a high degree of deference to faculty judgment in matters, such as qualifications for membership, which are peculiarly within the competence of the faculty.¹²

The immediate reaction to the tenBroek resolution was mixed, ranging from high approval among the most firmly principled opponents of the oath, to resentment among others inclined to deference or submission toward the regents, to undisguised hostility from a number of regents who chose to perceive the tenBroek resolution as a direct slap in the face. Foremost among the latter group was John Francis Neylan, a prominent attorney long associated with the Hearst newspaper empire, who had just succeeded to the chairmanship of the regents' special committee on conference and was

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now determined to lead the board into a new and more militant phase of its public imbroglio with the university faculty. Writing many years later about that pivotal meeting, David P. Gardner, a faculty member and an administrator in the state university system, was among the harshest critics of tenBroek's performance. Gardner observed that the senate, in passing both the tenBroek resolution and a similarly forthright resolution by George P. Adams, senior professor of philosophy, had shifted its ground from an earlier "more conciliatory position" to one "more directly and explicitly at odds with the Regents." He then offered his own appraisal of the tactics and consequences of the two parallel resolutions:

Passage of the Adams and tenBroek resolutions late in the evening, after they had been earlier discussed and rejected, not only created resentments among members of the faculty who regarded the tactics as improper and irresponsible but, more important, also engendered hostility among the Regents toward the Senate. The resolutions were viewed by many of the Regents as a challenge and were principally responsible for turning a sharp disagreement between the faculty and the Regents into a very real and bitter controversy. That is not to say that passage of these two resolutions was unjustified, unwise, or improper; or that the reaction to them by members of the Board was justified,

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wise, or proper; or the reverse. Rather, it is simply an observation that, given the history of the dispute to that point, the two resolutions turned an argument into a controversy of a very different kind.¹³

Whatever the merits of this *ex post facto* criticism of the propriety of the tenBroek and Adams resolutions and their endorsement by the academic senate, it is unfortunate that Gardner's elaborate analysis of the controversy failed to include any reference to additional remarks by tenBroek during the long, emotionally charged meeting. TenBroek's purpose was to clarify his original resolution and allay the apprehensions of some faculty members that the message was an act of irresponsibility and belligerence. What follows constitutes the major portion of his remarks:

Since the last meeting of the Senate and again today, I have been impressed with the feeling of members of the faculty that the resolution I introduced might be regarded as an unduly belligerent and irresponsible statement, as a declaration of war which closes the door to future negotiations and the hopes of a reasonable solution.

This troubled me deeply. Declarations of war do not help reasonable men settle their differences and I have acted throughout and will continue to act upon the belief that the Regents, the Administration and the faculty are all reasonable men seeking,

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in the interests of University and State, a solution to a difficult problem. It was not my intention to declare war, and a careful reexamination, with this criticism in mind, has reassured me that the resolution I have placed before the Senate is not hostile, defiant or aggressive in letter or spirit. Above all, it does not substitute the battlefield for the conference table.

The resolution consists of three parts: a statement of principles; a statement of fact; and a statement of policy. The first three paragraphs present the basic issue underlying the entire controversy and the principles in terms of which a solution must be sought. Such a statement is necessary, first, as a crystallization of the Senate's own understanding of the situation. The faculty, I believe, has moved steadily from its initial reaction of indignation and dismay to a full realization of its responsibilities to both the academic and political community. And this realization must be given adequate expression.

Such a statement of principles is necessary, second, in discharge of our duty to the public. On the whole, the public has been remarkably patient with us. We have never explained to it the serious basis of our opposition to the oath. We cannot allow the impression to prevail that our opposition is the result of either professorial idiosyncrasy or Communist Party membership. The University of California is, after all, a public institution and its character as a free institution depends ultimately upon public understanding and confidence. We must, by a declaration of the principles upon which we stand, now make a long-delayed contribution to that understanding and confidence. We must make it clear that the issue involved in the oath is not whether we

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are against Communism. It is whether we are for academic freedom. We must make it clear that we are not interested in Communism; we are [interested] in the position of the Senate. We are not concerned with membership in this or that political organization as a ground for exclusion from the faculty; we are concerned about the principle of imposing political affiliation as a test. In short, we are less concerned about this foolish and impotent oath; more [concerned] about free inquiry and teaching.

. . . There may well be disagreement among members of the Senate as to the degree to which the repute of the University, faculty morale, or the principle of tenure and academic freedom have suffered. It is pointless to argue about these questions of degree. But let us not lull ourselves into believing that academic freedom, faculty morale, and the system of tenure—for all these are inseparable—have not already been damaged. The imposition of a political test, implemented by an oath, is itself an inroad into academic freedom. But taken together with the attendant circumstances, and the activities and conditions which have ensued, the inroad is better characterized as an invasion.

Can it be denied that the undue withholding of contracts and the follow-up letters which speak ominously of “lists” of signers and nonsigners have been coercive in their impact? Can we dismiss with assurance the feeling that even opposition to the oath and slowness in signing will have a bearing on whether we are to be rehired or promoted? Who among us now, dealing with controversial social issues in his classes, has not pondered the wisdom of disclaiming any unorthodoxy, of proclaiming that he is a thinker by permission operating within permissible bounds?

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A rent has been made in the seamless fabric of academic freedom, the unraveling of which may be unpredictable but it is inevitable.¹⁴

These supplementary remarks of tenBroek's, read together with his formal resolution on the main issues underlying the loyalty oath controversy, are reproduced here at some length to convey the spirit of his *pleading*, in the legal sense of the term, as well as emphasize the logic of his argument. In its endorsement of the tenBroek resolution, the senate expressed its confidence in him by forwarding his text to the board of regents as its own declaration of principles and analysis of the issues. No doubt there was division among the faculty. The tenBroek style in the political forum could be abrasive, perhaps somewhat prosecutorial, but it was rarely if ever attacked as sly or deceptive or anything worse than rhetorically overpowering and thus intimidating. The outcome of the oath controversy was the defeat of the faculty effort by the Korean War and its legal consequence—the Levering Act, which left unhappy and unresolved consequences in its wake.

The reputation tenBroek was establishing in these postwar years, among students and faculty alike—not only with friends and allies but with many who counted

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themselves his adversaries and competitors—was not much different than it had been those many years ago at the California School for the Blind, when he would sit encircled by blind classmates and read aloud from dense and ponderous braille volumes, one story after another, through the chill of the night. They trusted him, those fellow students; they respected his abilities, admired his eloquence, and acknowledged him a natural leader. Many years later, another generation of students would rally around him again in the common cause—now become the urgent campus cause—of free expression, free association, and something new called civil rights.

The Free Speech Movement

Almost from the moment of his faculty debut as an instructor in the department of public speaking at the University of California at Berkeley, Jacobus tenBroek established an unusual rapport with his students. Over the years that relationship grew apace with his expanding scholarly output, his increasingly legendary reputation as a master teacher, and his public presence in a variety of campus disputes involving issues of academic freedom. Whether the freedoms under threat were those of the faculty or the students did not matter to

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him; both were equal members of the university community of scholars. Thus when a sudden massive student uprising took place on the Berkeley campus in the fall of 1964, more than a few old-timers looked around for the blind professor—with his familiar white cane, stiff gray beard, ramrod-straight carriage, and unmistakable voice still raised in urgent dialogue.

And indeed tenBroek was there on the hustings, from the start of the fight—just as he had been some fifteen years before, during the loyalty oath controversy, when the combined faculty of the University of California system had been ordered by its board of regents to sign a loyalty oath. The word to the faculty then had been to sign or get out. There had followed a bitter and protracted struggle, a civil war without resolution or a permanent peace. The university had survived that ordeal then, but its core institutional values, the bedrock principles of academic freedom, had not prevailed; some would say they had been permanently disabled. Now another internecine conflict had broken out on the contentious Berkeley campus, a struggle more intensely waged and dramatically confrontational than any before it, one more fraught with implications and consequences for the future.

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In 1964, preceding the start of the fall term at Berkeley, students in their usual widely diverse affiliations began to cluster around the sidewalk at Bancroft Way and Telegraph Avenue, setting up tables for the approved, noncontroversial purposes of raising funds, distributing leaflets, recruiting members, and making speeches on behalf of their special causes. But on September 14, a week before the start of classes, an official communique was issued announcing that the entire sidewalk strip (roughly 26 by 90 feet) would no longer be available for “political” activities. Apparently, the territory in question belonged not to the City of Berkeley, as had long been supposed, but to the university itself, which moved to take possession of it. There followed a series of inconsistent retreats and standoffs climaxed by a memorable Sather Gate rally at noon on October 1. Police were called in and held a young activist, Jack Weinber, inside a police car for an entire night while hundreds of students surrounded and immobilized the car. Several of them, notably including Mario Savio, a sophomore leader of the Free Speech Movement, addressed the growing crowd from the roof of the police car.

In all this frenzied and largely spontaneous activity, Jacobus tenBroek was more than just a visible figure in

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defense of the rights of the protesting students. He was one of the Two Hundred, an ad hoc group of professors who took the lead in supporting the student cause and articulating the philosophical rationale behind it. (TenBroek was one of many who fanned out to other campuses and constituencies to spread the message.¹⁵) When James Farmer, national director of the Congress of Racial Equality, “addressed a noon rally of three thousand from Bancroft and Telegraph,” according to a history of the Free Speech Movement, “he was introduced by Jacobus tenBroek, the celebrated, blind professor of political science.”¹⁶ (TenBroek had finally been given the opportunity to teach political science in 1963.)

The Free Speech Movement’s last hurrah—not perhaps its final act but the grand climacteric of its brief incendiary existence—came on December 2, 1964, when it held a massive rally at Sather Gate that attracted thousands of students. This was immediately followed by a voluntary march of approximately one thousand students into Sproul Hall, the administration building, where they all sat peaceably on the floor and, except for a few hundred, remained encamped overnight. The next day Governor Edmund G. Brown dispatched hundreds of police officers to arrest the sprawling students, who

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numbered well over 800 by then—an awkward but non-violent process that went on for twelve hours. Some time later 768 participating students, male and female, exhausted but unchastened, were apprehended on various charges and eventually brought to trial. In the tedious course of these legal procedures, Jacobus tenBroek played a role of unusual importance, even for him. Indeed, it may have been his finest hour as unofficial counsel for the defense on behalf of the powerless, the helpless, even the reckless—all who were denied their civil rights and stripped of their civil liberties. Something of the nature of tenBroek's contribution in this short-lived chapter of campus history—the Free Speech Movement of 1964—can be gleaned from a newspaper account by Colin Miller, "Professors Ask Dismissal of Student Sit-in Charges," that appeared in the *Oceanside (Calif.) Blade-Tribune*:

The 768 defendants awaiting trial for last month's sit-in demonstration on the University of California's Berkeley campus have received a strong helping hand.

A group of 139 distinguished members of the faculty filed an appeal seeking dismissal of all court charges against the students.

The professors submitted their unusual "suggestion for dismissal" to Judge Rupert Crittenden of the Berkeley Municipal Court, which has jurisdiction over the sit-in cases.

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The faculty plea, submitted in the form of a brief with considerable supporting documentation, argues that recent Supreme Court decisions have justified sit-ins as part of a technique to correct unconstitutional civil ills. It maintains that large issues of academic freedom were involved in the student actions. It seeks to establish the relationship between the students and the civil rights movement.

Judge Crittenden accepted a bound copy of the suggestion from a committee of four professors who visited him in his chambers Thursday morning.

Subsequently, the group held a press conference for reporters under the leadership of Professor Jacobus tenBroek of political science.

In his information discussion, Professor tenBroek said, "The civil rights movement is everywhere in this land. It has been supported by the Courts and by Congress. The right of recruitment and advocacy sought by the students in their efforts this fall have largely been directed to civil rights purposes. The Berkeley sit-in of Dec. 2 and 3 was an episode in a broad series of events. They were part of a whole pattern."

Dr. tenBroek said the 139 signatures were gathered in a day and a half and at a time when the university is in the midst of semester final examinations. "If we had more time," Dr. tenBroek said, "we could have gotten hundreds more signatures, I'm sure."

In response to questions, Dr. tenBroek and his associates said that [the] submitted argument maintains the premise that the students were actually defending the law and not violating it during their sit-in. A corollary thesis of the presentation is that the

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university for many years has been unconstitutionally restricting the civil rights of students by its rules.

Since the withdrawal of Chancellor Strong on January 2 and the accession of Martin Meyerson to the top administrative position on the campus, the interpretation of rules has been eased.

As a preface to the argument itself, the brief quoted from a commencement address delivered by Governor Brown at Santa Clara University in 1961. At that time, the Governor said: "Thank God for the spectacle of students picketing, for students protesting and freedom-riding, for students listening to society's dissidents, for students going out into the fields with our migratory workers, and marching off to jail with our segregated Negroes. At last we're getting somewhere. The colleges have become boot camps for citizenship—and student leaders are marching out of them."

Professor tenBroek is one of the most popular professors at the University. Although he teaches political science, he holds Doctorates in Law from both Harvard and California. He has been blind since an accident at the age of six. He has a worldwide reputation for his knowledge of international law. Within the United States he is known as a foremost constitutional authority.

Personally Dr. tenBroek's stature at Berkeley is comparable to that enjoyed by Woodrow Wilson when he was a professor at Princeton 60 years ago. Wilson's courses were so popular with students that no lecture hall was large enough to accommodate his audiences. Students who were unable to register for Wilson's classes for credit would attend his lectures for pleasure.

The introduction of the faculty brief has given a great lift to the hopes of the students awaiting trial. Judge Crittenden may

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act upon it Tuesday when the accused students are scheduled to come before him for arraignment.¹⁷

By the time that news article was published, in mid-January 1965, the Free Speech Movement was effectively over. It had ended, like the loyalty oath controversy, in an uncertain mix of gains and losses, although the student protagonists emerged from their scramble with a more clear-cut victory—the full restoration of their rights of free speech and free assembly in the “forbidden zone” of Sather Gate—than had their faculty counterparts of a generation earlier. Before much longer the new generation in its turn gave way to something completely different called, perhaps unwisely, the Filthy Speech Movement; in time that too passed on, leaving in its wake a loose set of countercultural options too diverse and ambiguous to be interpreted here.

Through it all, alone and erect, strode the celebrated blind professor, Jacobus tenBroek—greeted deferentially by his students, hailed warmly by his colleagues, shunned only by a remnant of implacable foes—on his way to class at eight o’clock in the morning, with a briefcase of braille notes in one hand and a formidable walking stick in the other. He stopped coming in March 1968.

X

THE ROAD TO EQUALITY

THERE was once a man of some accomplishment of whom it was said, as he approached the end, that he had “followed all of his days something he could not name.” That man was not Jacobus tenBroek. Early in his own life he came to know the name, the shape, the palpable identity of the thing he was to follow all of his days: the one true thing, the far-off divine event that sustained him through the slings and especially the arrows of outrageous fortune—the vision of equality.

The word *equality* itself is a mere abstraction, to be sure, pointing vaguely to what philosophers and poets have variously called the elusive absolute, the Platonic ideal, or the impossible dream. For tenBroek, however, equality was never just an abstraction, never less than a pragmatic end-in-view: a right to be claimed, a struggle to be won, a constitutional mandate to be enforced. He took his departure in the defense of equality from the

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magisterial phrase in the U.S. Declaration of Independence (1776): “. . . all men are created equal.” But ten-Broek was scarcely bemused by the heightened rhetoric of the text. “All men?” he asked bluntly. “Well, not quite all—not Negro slaves like those owned by Jefferson, among others; not Indians, who were not taxed and not considered part of the community; not the deprived and downtrodden generally—or at least not just yet.”

“Yet this one phrase and proposition,” declared ten-Broek, “sounded the death knell of slavery.” The self-evident truth of Jefferson’s preamble “eventually made the whole institution of slavery untenable.” For it was to become “the piercing cry of the Abolitionists” who joined it with, and gave it primacy over, the privileges and immunities of citizenship and the right to life, liberty, and property as well as due process. These bedrock principles would provide the entire rationale for the Fourteenth Amendment, yet it was equality that came to dominate the constitutional equation. “Ninety years after the Declaration of Independence,” noted tenBroek, “Jefferson’s self-evident truth made its way explicitly into the Constitution.”¹

Self-evident that truth may have been; but self-executing it was not. Witness the commanding language

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of the Fourteenth Amendment (1868), enacted in the aftermath of the Civil War to give teeth to the self-evident truth: No state shall “deny to any person within its jurisdiction the equal protection of the laws.” Any person? “Well,” countered tenBroek,

not quite any person; not quite full protection; not just yet. Indians were still not counted. Slavery had been abolished, but its badges and indicia, the long social aftermath of a previous condition of servitude, remained to rack the century ahead. The deprived, the destitute, the diseased, the degraded—for moral pestilence and physical pestilence, in Milton’s phrase, leaped forth into the world “like two twins cleaving together,” and race prejudice, that other “sturdy pestilence” in Justice Douglas’ phrase, formed a third sibling—these also were not included in the constitutional command or at least were not considered within the scope of its administration.²

Yet, tenBroek declared, that lofty reification of human equality invoked by Jefferson somehow descended from the Olympian heights of the Declaration to take its place ninety years later as the centerpiece of the Fourteenth Amendment, modified by the Congress only “to emphasize the element of protection in the concept of equality, due and full protection of all men in their natural rights.” And now, he wrote in the mid-1960s,

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“another ninety years later, after having been for nearly a century lost and forgotten or subverted by the separate but equal stratagem, equal protection is again emerging from its relative latency to strike down some of these vestiges” and provide hope for the ultimate exposure and extirpation, however gradually, of all the noxious roots of inequality and prejudice.³

The U.S. Supreme Court in the landmark case *Brown v. Board of Education of Topeka* (1954) picked its constitutional underpinnings with care. It might well have selected for highest priority any of the other protective elements stipulated in the first section of the Fourteenth Amendment—those relating to the constitutional guarantees of due process of law and of privileges or immunities. The justices might have chosen any of these as “the great constitutional engine that would level state barriers separating the races in the public schools.” Instead, ten-Broek noted in a phrase of cumulative forcefulness, the Court “chose the seminal, pervasive, multifaceted, much misunderstood, much espoused, much criticized notion of equality. No state shall ‘deny to any person within its jurisdiction the equal protection of the laws.’”⁴

In thus underlining the central role played by the tattered doctrine of equal protection in *Brown v. Board*

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of *Education*, tenBroek might well have pointed (though he did not) to his own instrumental role in reclaiming that “much misunderstood, . . . much criticized” doctrine in the course of the historic reversal of judicial precept and practice that was embodied in the unanimous decision of 1954. For it was tenBroek, writing in collaboration with Joseph Tussman six years before *Brown*, who had resurrected and redefined the Fourteenth Amendment’s equal protection clause expressly with respect to its relevance to the impending national struggle for civil rights.⁵ At that time, as Joel Handler has pointed out, “the equal protection clause was rarely argued or accepted by the courts. In Justice Holmes’s words, it was ‘the last resort of constitutional arguments.’” TenBroek and Tussman, in their ground-breaking article “The Equal Protection of the Laws” (1949), not merely anticipated but substantially instigated the movement of the next two decades toward judicial acceptance of the doctrine of “substantive equal protection” and the related concept of “forbidden classification.” The authors argued that with regard to certain human traits no legislative classification should be regarded as permissible; for example, “The assertion of human equality is closely

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associated with the denial that differences in color or creed, birth or status, are significant or relevant to the way in which men should be treated.” Thus laws that seek to classify men “by color or creed or blood . . . are repugnant to the demand for equality,” and therefore such traits should not be made the basis for the classification of individuals in the law. Specifically and pointedly, tenBroek and Tussman argued that existing segregation laws, beginning with the “separate but equal” ruling of *Plessy v. Ferguson* (1896), should be overturned on the basis of the “forbidden classification” doctrine. At the time of their writing, the single judicial precedent they could cite in support of their argument was the famous concurring opinion of Justice Robert H. Jackson in *Edwards v. California* (1941), which contained these words: “The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color.”⁶

In the years immediately following the equal protection article—years that coincided with tenBroek’s two major political and constitutional studies of the decade, *The Antislavery Origins of the Fourteenth Amendment* (1951) and *Prejudice, War, and the Constitution* (1954)—the twin doctrines of substantive equal protection and

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forbidden classification began to attract converts among constitutional scholars and arouse the hopes and passions of the “new abolitionists” within the civil rights movement. The 1950s were to be an epoch of considerable unrest and incipient upheaval; those overzealous observers of the national scene, both then and later, who sought to dismiss the postwar decade as a kind of empty space-time vacuum—where “the bland led the bland,” in Arthur Schlesinger Jr.’s phrase—could scarcely have been further from the truth.⁷ To be sure, the decade of the 1950s was no age of Aquarius, heralding the karmic counterculture of a thoroughly rebellious generation of the following decade. It would, nevertheless, prove a time of more significant and lasting change in the styles of social activism and collective self-expression, culminating in the historic struggle for civil rights, than the nation had experienced since the desperate years of the Great Depression. Amid this gathering storm of new causes and insurgent voices, tenBroek himself began to carve out a new style of political leadership that would propel him beyond his core allegiance to the organized blind movement into the terra incognita of the biblical poor—those who, it was written, shall be with us always.

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A Universal Vision

TenBroek's widening quest for equality was to take him in two directions: one leading to the more familiar and measurable population of the poor within America, the other to the heterogeneous multitudes of blind people beyond America. These two missions were distinct and different but also closely related, a relationship particularly evident in TenBroek's decade-long tenure as a member of California's State Social Welfare Board. He was first appointed to the board in 1950 by Governor Earl Warren, himself soon to be elevated to the Supreme Court as chief justice and to honor that institution by writing the opinion for a unanimous Court in *Brown*, the most important decision of the twentieth century. TenBroek was reappointed to the Social Welfare Board three times in the course of the decade; in 1960 he was elected its chairman and remained at the helm for another three years, when he became a casualty of shifting political fortunes within the state and was denied reappointment. But during his tenure on the board he made a lasting impression on colleagues and opponents alike through his devotion to all the disadvantaged clients of

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public welfare and, what was still more uncommon in the ranks of official bureaucracy, the logical force and authority of his judgments. From tenBroek's own standpoint, the welfare board was a bully pulpit; more than a few of his influential pronouncements in the field of disability rights—for example, "The Right to Live in the World: The Disabled in the Law of Torts"—were delivered in that prestigious forum.⁸

Not long after his departure from the board, tenBroek took a daring step in the direction of a more direct and grassroots involvement in the lives and needs of California welfare recipients, especially families with dependent children. Without fanfare or elaborate publicity he set about establishing an entirely new movement: a statewide association of diverse groups of welfare recipients called the California Welfare Rights Organization. It promptly held three successive conventions during 1966 with the goal of a nationwide organization of aid recipients—a people's movement that would unmistakably be *of* the poor and *by* the poor as well as *for* the poor. The first convention of the new voluntary association was held in February in Oakland, where committees were formed to draft a constitution and prepare a framework for the

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group. The second convention took place in June in the impoverished working-class community of Fontana in San Bernardino County. There a constitution was adopted, along with the organization's initial resolution—a condemnation of night raids by public agencies on the homes of welfare recipients—and Jacobus tenBroek was appointed to convene a third convention. That final gathering, designed to complete the planning for the statewide organization, took place in the town of Del Ray at a Baptist church with a Mexican congregation. Delegates from a variety of welfare consumer groups, including the National Federation of the Blind, enacted a legislative agenda of programs and reforms that bore more than a slight resemblance to the aspirations of the organized blind movement a quarter of a century earlier, including a guaranteed annual income (or at least a floor below which the public assistance system should not permit needy persons to sink) and a provision "that the law recognize the fundamental democratic rights of recipients to organize for self-help and to protest legislative and administrative injustice."⁹ Among those present at the Del Ray convention, it was duly reported, were Dr. and Mrs. Jacobus tenBroek of Berkeley.

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Once the new Welfare Rights Organization appeared to be off and running in California, however, tenBroek quietly backed away from a leadership role. There were various reasons for his decision, notably the hope that a new cohort of leaders from a new generation might arise from the ranks of the welfare poor to lead the movement. He may also have begun to recognize that he had little time left: in the words of Robert Frost, whose poetry he was fond of, he still had “promises to keep” and “miles to go” before his sleep.

Among those promises, in addition to the ambitious umbrella group for welfare rights, was an even more far-reaching program of his own design—an International Federation of the Blind, a logical if not easily achievable extension of the National Federation of the Blind. Inaugurated in 1964, the IFB had within four years expanded its membership to include sixteen nations. This blind version of Tennyson’s prophetic “Federation of the world,” envisioned in his epic poem “Locksley Hall,” arose on a wave of enthusiasm, not to say of idealism, finding expression in a new global vision of unity and equality for all the blind people of Earth. Those twin symbols furnished the keynote of a major address that tenBroek delivered in Berlin, Germany, in December

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1965 entitled “Unity and Equality: The I.F.B.” After describing the “great trend toward world unity” then reaching across the globe, tenBroek declared:

Side by side with this great trend . . . is the trend toward equality. Indeed, equalitarianism is more than a trend: it is an insistent force, a swelling demand from the deserts and the rice fields, the outlands and the back country and, it must be said, from the pulsing heart of industrial democracies. It is the dominant theme of what has been called the revolution of rising expectations. On its negative side this driving movement reflects the stark fact that the old injustices and inequalities, the vast gulfs between the haves and the have-nots, are no longer tolerable. What Abraham Lincoln said of his own nation a century ago applies with equal force to the world today: a society divided against itself cannot stand; the world cannot endure half-slave and half-free—or half-starved and half-stuffed.¹⁰

Jacobus tenBroek never abandoned that universal vision of equality. As a student of constitutional law and political history and as a material witness himself to the enormities of prejudice, tenBroek knew, better than most, the terrible odds against that vision. Nevertheless he took the first step on the road to equality.

It could be said that in his last days tenBroek had a dream, a dream not unlike that of another more visible prophet of his own time, the Reverend Martin Luther

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King Jr. King's recurring dream took the activist form of a Poor People's March on Washington, D.C., intended to inaugurate what the historian David L. Lewis has called "a coalition of the poor of all races . . . seeking to enroll janitors, hospital workers, seasonal labourers, and the destitute of Appalachia, along with the student militants and pacifist intellectuals."¹¹ Unfortunately, that historic march had to be postponed because of a change in King's itinerary, which took him in the spring of 1968 to Memphis in support of the striking sanitation employees of that city—its garbage workers, mostly black and uniformly poor—all now part of the minister's broadened congregation. It was King's last mission on earth, climaxed by his final public oration, in which he foresaw the terrible fate awaiting him. On April 4, 1968, as the world knows, Dr. King was shot to death by a sniper while standing on his motel balcony in the company of his close friends and associates. His dream, however, did not die with him.

Jacobus tenBroek had a dream as well, in those same fateful and conflicted years, a not dissimilar vision of a nationwide gathering of poor people, the voiceless inhabitants of the other America, coming together as a multitude to repudiate the ancient law of the poor and tear

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down the wall of separation, that invisible wall of shame, which still divided haves from have-nots across the land. Nor was tenBroek's dream only a quixotic fantasy of wish fulfillment or religious piety; it had already found forceful expression in his massively documented studies on the history of the Elizabethan poor law in relation to family and welfare law. The dream was grounded in the facts. But neither Dr. tenBroek nor Dr. King lived long enough to bring their ultimate visions to reality and lead their parallel movements to victory. Without their moral leadership, the moment of greatness flickered in America, the window of opportunity closed, and the inspiration embodied in these two remarkable public citizens was extinguished, not to flame again through the long, slow, rudderless drift of the expiring century.

And yet, in tenBroek's life, as in King's, there was more than a dream to be remembered and acknowledged, more even than the luminous vision of equality that these two men so deeply shared. There was also, for each of them, a tangible and demonstrable symbol of their labor and their leadership—the movement. For King this was the civil rights movement. For tenBroek, this was the organized blind movement, a singular force of his own creation that would within a half

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century overturn the archaic “blindness system” and replace it with a democratic assembly of consumer participation and consultation in which the organized blind themselves constituted the decisive authority. The special relationship between tenBroek and the movement was well portrayed by his successor to the leadership, Kenneth Jernigan, who observed that “the relationship of this man to the organized blind movement, which he brought into being in the United States and around the world, was such that it would be equally accurate to say that the man was the embodiment of the movement or that the movement was the expression of the man.” Jernigan concluded:

For tens of thousands of blind Americans over more than a quarter of a century he was leader, mentor, spokesman, and philosopher. He gave to the organized blind movement the force of his intellect and the shape of his dreams. He made it the symbol of a cause barely imagined before his coming: the cause of self-expression, self-direction and self-sufficiency on the part of blind people. Step by step, year by year, action by action, he made that cause succeed. . . .

In the life and work of Jacobus tenBroek can be read the story of a man and a movement.¹²

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There may be the hint of a prophecy, a portent of things to come, in the anecdote told by tenBroek's younger sister Ivy and related earlier about the singular moment when, as she faltered in her eighth-grade valedictory address, Jacobus provided a timely cue.¹³ He may have found his calling that day in the school auditorium. Not many years later he would be the leader of a national federation of blind persons like himself, whose champion he would remain as long as any were in need of one—any of the thousands who came to share his underlying message of hope and confidence much as he had boomed it out to his sister and to the world in that moment of truth in the schoolhouse. He need have changed only a few words of that message: Let no man or woman be silent any longer because of blindness, or for lack of a champion to lend his voice.

AFTERWORD

I first met Jacobus tenBroek on a brisk spring day in 1948, at his gargantuan hillside home just north of the Berkeley campus of the University of California. It was several stories high, with living quarters on the bottom floor and cooking and dining facilities at the top, and in between them a great hospitable space for working and discoursing and entertaining, comfortably clustered around the most mammoth fireplace I have ever been warmed by. Over the next two decades, until his untimely death in another springtime, I was destined to ascend and descend an outdoor staircase that rose steeply alongside that old mansion. I no longer remember how often I clambered up and down that staircase, but I believe it was I who named it Jacobus's ladder.

I had been invited to the house that day to be interviewed for a part-time job as Professor tenBroek's

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research assistant on an ambitious scholarly project bearing the official title “The Japanese American Evacuation and Resettlement Study of the University of California.” I had recently returned from two years in the postwar, American-led occupation of Japan, and it must have been this tenuous Japanese connection that prompted Professor tenBroek to consider me for the research assistantship, although I was then but a lowly undergraduate, if somewhat older than most of my peers. Besides that, I had no experience at all in social science research, surely a necessary qualification in this instance. No matter. Professor tenBroek seemed to think I had the right stuff. As I recall, he put me to work that very day. Nor was that the only helping hand he would hold out to me. A couple of years later, when I had earned my bachelor’s degree and moved on to graduate school, he approached his faculty colleagues on the project and somehow convinced them that I should be elevated to the status of coauthor of our forthcoming book. And so I was.

During the next score of years I worked almost continuously alongside Professor tenBroek through a variety of projects. In the 1950s we collaborated on the writing of a second book, *Hope Deferred: Public Welfare*

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and the Blind (1959), and began what was to be a long-term editorial relationship with *The Braille Monitor*, the official periodical of the National Federation of the Blind. Meanwhile, on the university campus I was successively his student, his junior colleague in the Department of Speech, and a frequent companion on convention trips around the country in the course of his prodigious service as leader of the organized blind movement in America.

These episodes may serve to flesh out my formal credentials for undertaking the present biographical narrative. I suppose that I knew the man about as well as anyone outside his immediate family. But, let me state emphatically, this book does not aspire to be a comprehensive personal history or a definitive interrogation of a life entire in the modern or postmodern fashion: all flaws exposed, all secrets revealed, all intentions deconstructed. The book does not, in fact, seem very much like a conventional biography except in its early chapters; it more closely resembles a modest portrayal of the mind and work of its prodigiously gifted subject. I might have called it *A Mind for All Seasons*. But I am satisfied with the title I did choose. As for the subtitle, the idea of equality is the book's pervasive

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theme, the struggle for equality its active thesis. As that struggle defined and shaped the life of Jacobus tenBroek, so it has set the boundaries of this endeavor.

A word about the bibliographical resources on which my research has mainly relied. In the course of his professional life, Jacobus tenBroek and his wife, Hazel, who was a trained legal secretary, compiled a massive collection of files, many of them in braille, pertaining to every aspect of his callings, careers, and controversies. Eventually this entire archive, containing dozens of full-sized file cabinets and miscellaneous containers, was trucked across the country from its original Berkeley depository to its permanent home in the National Federation of the Blind's national headquarters in Baltimore. It stands today as a unique and invaluable resource for scholars and researchers investigating the tenBroek collection in a graceful new facility within the center's expansive Kenneth Jernigan Rehabilitation and Training Institute. As this suggests, both the accessibility and the technology of these cutting-edge resources—and their growing importance to the blindness community nationwide—reflect the talent and dedication of the center staff, from President Marc Maurer to Dr. Betsy

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Zaborowski, director of the training center, and her cadre of technology wizards and vocational rehabilitation specialists. I am grateful to them all for aid and comfort in my own bibliographical searches and seizures (as they have sometimes seemed). In particular I am indebted to Dr. Maurer and the National Federation of the Blind for a grant in support of my research for writing this book.

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FLOYD MATSON

Honolulu, Hawaii, September 2004

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THE CROSS OF BLINDNESS

*Address by Jacobus tenBroek, president, National Federation of the Blind,
at the banquet of the annual convention, New Orleans, July 6, 1957*

IN the short seventeen years since our founding of the National Federation of the Blind, we have grown from a handful of men and women scattered over seven states to a federation of forty-three state affiliates. The first Convention of the NFB in 1940 was attended by twelve or fifteen persons—our Convention last year had a registration of seven hundred and five from every corner of the Union.

That is rapid organizational growth by any yardstick. Who are these people of the National Federation of the Blind? What is the purpose that has led them to self-organization in such numbers, and unites them now with such apparent dedication and enthusiasm?

It is not enough, I think, to answer that the members

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of the NFB are drawn together by their common interest in the welfare of the blind; for many of the sighted share that, too. Nor is it sufficient to say that we are united only because we are blind; many who are affiliated with agencies for the blind have that characteristic also. It is fundamental to the uniqueness of our group that we are the only nation-wide organization for the blind which is also of the blind. The composition of the NFB, indeed, is living testimony to the fact—unfortunately not yet accepted by society as a whole—that the blind are capable of self-organization: which is to say, of leading themselves, of directing their own destiny.

Yet this is still only half the truth, only a part of the characteristic which defines our Federation and provides its reason for being. Our real distinction from other organizations in the field of blind welfare lies in the social precept and personal conviction which are the motive source of our activity and the wellspring of our faith. The belief that we who are blind are normal human beings sets us sharply apart from other groups designed to aid the blind. We have all the typical and ordinary range of talents and techniques, attitudes, and aspirations. Our underlying assumption is not—as it is

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with some other groups—the intrinsic helplessness and everlasting dependency of those who happen to lack sight, but rather their innate capacity to nullify and overrule this disability—to find their place in the community—with the same degree of success and failure to be found among the general population.

Perhaps I can best document this thesis of the normality of the blind with a random sample of the occupations represented at our National Convention a year ago in San Francisco. Among the blind delegates in attendance, there were: three blind physicists engaged in experimental work for the United States Government. There was one blind chemist also doing experimental work for the national government. There were two university instructors of the rank of full professor, a number of other college instructors of various ranks, and several blind teachers of sighted students in primary and secondary grades in the public schools. There were thirteen lawyers, most in private practice, two employed as attorneys by the United States Government, one serving as the chairman of a state public service commission, one serving as a clerk to a state chief justice. There were three chiropractors, one osteopath, ten secretaries, seventeen factory workers, one shoemaker, one cab dispatcher, one

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bookmender, one appliance repairman, four telephone switchboard operators, numerous businessmen in various businesses, five musicians, thirty students, many directors and workers in programs for the blind, and sixty-one housewives.

At any other convention there would be nothing at all remarkable about this broad cross-section of achievement and ability; it is exactly what you would expect to find at a gathering of the American Legion or the Exalted Order of Elks, or at a town meeting in your community. Anywhere else, that is, but at a convention of the blind. It never ceases to surprise the public that a blind man may be able to hold his own in business, operate a farm successfully, argue a brief in a court of law, teach a class of sighted students, or conduct experiments in a chemistry lab. It comes as a shock to the average person to discover that the blind not only can but do perform as well as the next man in all the normal and varied callings of the community.

But this "shock of recognition," on the part of many people, too easily gives way to a mood of satisfaction and an attitude of complacency. After all, if the blind are so capable, so successful, and so independent, what is all the fuss about? Where is the need for all this

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organization and militant activity? Why can't the blind let well enough alone?

These are reasonable questions, surely, and deserve a reasoned answer. I believe that the answer may best be given by reciting a list of sixteen specific events which have taken place recently in various parts of the country. The events are:

1. A blind man (incidentally a distinguished educator and citizen of his community) was denied a room in a well-known YMCA in New York City—not on the ground that his appearance betokened inability to pay, which it did not; not on the ground that he had an unsavory reputation, which he did not; not on the ground that his behavior was or was likely to be disorderly, which it was not—but on the ground that he was blind.
2. A blind man was rejected as a donor by the blood bank in his city—not on the ground that his blood was not red; not on the ground that his blood was watery, defective in corpuscles or diseased; not on the ground that he would be physically harmed by the loss of the blood—but on the ground that he was blind.
3. A blind man (in this case a successful lawyer with an established reputation in his community) was denied the rental of a safety-deposit box by his bank—not on the ground that he was a well-known bank robber; not on the ground that he had nothing to put in it; not on the ground that he couldn't pay the rental price—but on the ground that he was blind.

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4. A blind man was rejected for jury duty in a California city—not on the ground of mental incompetence; not on the ground of moral irresponsibility; not on the ground that he would not weigh the evidence impartially and come to a just verdict—but on the ground that he was blind.

5. A blind college student majoring in education was denied permission to perform practice teaching by a state university—not on the ground that her academic record was poor; not on the ground that she had not satisfied the prerequisites; not on the ground that she lacked the educational or personal qualifications—but on the ground that she was blind.

6. A blind applicant for public employment was denied consideration by a state civil service commission—not on the ground that he lacked the education or experience specifications; not on the ground that he was not of good moral character; not on the ground that he lacked the residence or citizenship requirements—but on the ground that he was blind.

7. A blind woman was refused a plane ticket by an airline—not on the ground that she couldn't pay for her ticket; not on the ground that her heart was weak and couldn't stand the excitement; not on the ground that she was a carrier of contagion—but on the ground that she was blind.

8. A blind machinist was declared ineligible for a position he had already held for five years. This declaration was the result of a routine medical examination. It came on the heels of his

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complete clearance and reinstatement on the job following a similar medical finding the year before. These determinations were made—not on the ground of new medical evidence showing that he was blind, for that was known all along; not on the ground that he could not do the job which he had successfully performed for five years with high ratings; not on the ground of any factor related to his employment—they were made on the ground that he was blind.

9. A blind high school student who was a duly qualified candidate for student body president was removed from the list of candidates by authority of the principal and faculty of the school—not on the ground that he was an outside infiltrator from some other school; not on the ground that he was on probation; not on the ground that he was not loyal to the principles of the United States Constitution—but on the ground that he was blind.

10. Traveler's Insurance Company, in its standard policy issued to cover trips on railroads, expressly exempts the blind from coverage—not on the ground that there is statistical or actuarial evidence that blind travelers are more prone to accident than sighted travelers are; not on the ground that suitcases or fellow passengers fall on them more often; not on the ground that trains carrying blind passengers are more likely to be wrecked unless it is the engineer who is blind—but solely on the ground of blindness. Many, if not most, other insurance companies selling other forms of insurance either will not cover the blind or increase the premium.

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11. A blind man, who had been a successful justice court and police court judge in his community for eleven years, ran for the position of superior court judge in the general election of 1956. During the campaign his opponents did not argue that he was ignorant of the law and therefore incompetent; or that he had been guilty of bilking widows and orphans; or that he lacked the quality of mercy. Almost the only argument that they used against him was that he was blind. The voters, however, elected him handily. At the next session of the state legislature a bill was introduced disqualifying blind persons as judges. The organized blind of the state were able to modify this bill but not to defeat it.

12. More than sixty blind men and women—among them doctors, teachers, businessmen and members of various professions—were recently ordered by the building and safety authority of a large city to move out of their hotel-type living quarters. This was not on the ground that they were pyromaniacs and likely to start fires; not on the ground that they were delinquent in their rent; not on the ground that they disturbed their neighbors with riotous living—but on the ground that as blind people they were subject to the code provisions regarding the “bed-ridden, ambulatory, and helpless,” that anyone who is legally blind must live in an institution-type building—with all the rooms on the ground floor, with no stairs at the end of halls, with hard, fire-proof furniture, with chairs and smoking-stands lined up along the wall “so they won’t fall over them.”

13. The education code of one of our states provides that deaf, dumb, and blind children may be sent at state expense to a school

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for the deaf, dumb, or blind, if they possess the following qualifications: (1) They are free from offensive or contagious diseases; (2) they have no parent, relative, guardian, or nearest friend able to pay for their education; (3) that by reason of deafness, dumbness, or blindness, they are disqualified from being taught by the ordinary process of instruction or education.

14. In a recent opinion the supreme court of one of the states held that a blind person who sought compensation for an injury due to an accident which he claimed arose out of and in the course of his employment by the state board of industries for the blind, was a ward of the state and therefore not entitled to compensation. The conception that blind shopworkers are wards of the state was only overcome in another state by a recent legislative enactment.

15. A blind person, duly convicted of a felony and sentenced to a state penitentiary, was denied parole when he became eligible therefor—not on the ground that he had not served the required time; not on the ground that his prison behavior had been bad; not on the ground that he had not been rehabilitated—but on the ground that he was blind.

16. A blind man who sat down at a gambling table in Reno, where such things are legal, was denied an opportunity to play—not on the ground that he didn't know the rules of the game; not on the ground that he might cheat the dealer or the other players; not on the ground that he didn't have any money to lose—but on the ground that he was blind.

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These last two cases show that the blind are normal in every respect.

What emerges from this set of events is the age-old stereotype of blindness as witlessness and helplessness. By virtue of this pervasive impression, a blind man is held to be incapable of weighing the evidence presented at a trial or performing the duties of a teacher. He cannot take care of himself in a room of his own, and is not to be trusted on a plane. A sightless person would not know what he has put into or removed from a safety deposit box; and he has no right to employment in the public service. He must not even be permitted to continue on a job he has performed successfully for years. Even his blood cannot be given voluntarily for the common cause.

Contrast these two lists—the one of the occupations represented at the NFB Convention, the other of the discriminatory activities—the first is a list of accomplishments of what the blind have done and therefore can do; the second is a list of prohibitions of what the blind are thought incompetent to do and therefore are debarred from attempting. The first list refers to the physical disability of blindness. It demonstrates in graphic fashion how slight a disadvantage is the mere loss of sight to the mental capacity and vocational talent

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of the individual. The second list refers not to the disability but to the handicap which is imposed upon the blind by others. The origin of the disability is plainly inside the blind person. The origin and responsibility for the handicap are just as plainly outside him—in the attitudes and preconceptions of the community.

Let me be very clear about this. I have no wish to minimize the character and extent of blindness as a disability. It is for all of us a constant nuisance and a serious inconvenience. To overcome it requires effort and patience and initiative and guts. It is not compensated for, despite the fairy tales to the contrary, by the spontaneous emergence of a miraculous “sixth sense” or any other magical powers. It means nothing more or less than the loss of one of the five senses and a corresponding greater reliance upon the four that remain—as well as upon the brain, the heart, and the spirit.

It may be said that the discriminatory acts which I have cited, and others like them which are occurring all the time, simply do not reflect informed thought. They are occasional happenings, unpremeditated, irrational, or accidental. Surely no one would justify them; no one would say that they represent an accurate appraisal of the blind and of blindness.

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Well, let us see. Let us look at some pronouncements of presumably thoughtful and informed persons writing about the blind—agency heads, educators, administrators, social workers, historians, psychologists, and public officials. What do they have to say about the potentialities of the blind in terms of intellectual capacity, vocational talent, and psychological condition? What do they report concerning the prospects for social integration on the basis of normality and economic advancement on the basis of talent?

First, an educator. Here are the words of a prominent authority on the education of the blind, himself for thirty years a superintendent of a school for the blind. "It is wrong to start with the school," this authority writes, "and to teach there a number of occupations that the blind can do, but to teach them out of relation to their practical and relative values. This is equivalent to attempting to create trades for the blind and then more or less angrily to demand that the world recognize the work and buy the product, whether useful or useless." More than this, it is necessary to recognize the unfitness of the blind "as a class" for any sort of competition and therefore to afford them not only protection but monopoly wherever possible. Declaring that "it must be

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unqualifiedly conceded that there is little in an industrial way that a blind person can do at all that cannot be done better and more expeditiously by people with sight," this expert considers that there are only two ways out: one being the extension of concessions and monopolies, and the other the designation of certain "preferred" occupations for the blind—"leaving the battle of wits only to those select few that may be considered, and determined to be, specially fit."

The conclusion that employment possibilities for the blind are confined, with only negligible exceptions, to the purview of sheltered workshops is contained in this set of "facts" about the blind which the same authority asserts are "generally conceded by those who have given the subject much thought": "[T]hat the handicrafts in which the blind can do first-class work are very limited in number, with basketry, weaving, knitting, broom and brush making, and chair caning as the most promising and most thoroughly tried out . . . that in these crafts the blind cannot enter into direct competition with the seeing either in the quality of product or the amount turned out in a given time . . . that the crafts pursued by the blind may best be carried on in special workshops under the

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charge of government officials or trained officers of certain benevolent associations . . . that among the 'higher' callings piano-tuning and massage are, under favoring conditions such as prevail for masseurs in Japan, the fields offering the greatest chance of success, while the learned professions, including teaching, are on the whole only for those of very superior talent and, more particularly, very superior courage and determination to win at all costs."

Second, an historian. The basis for this assessment, and its justification, have been presented in blunt and explicit language by a well-known historian of blindness and the blind in the United States. He says, "[T]here exists in the community a body of men who, by reason of a physical defect, namely, the loss of sight, are disqualified from engaging in the regular pursuits of men and who are thus largely rendered incapable of providing for themselves independently." They are to be regarded as a "disabled and infirm fraction of the people" or, more specifically, as "sighted men in a dark room." "Rather than let them drift into absolute dependence and become a distinct burden, society is to lend an appropriate helping hand" through the creation of sheltered, publicly subsidized employment.

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Third, administrators. That this pessimistic appraisal of the range of talent among the blind has not been limited to the schoolmen and historians may be shown by two succinct statements from wartime pamphlets produced by the Civil Service Commission in an effort to broaden employment opportunities for the physically disabled. "The blind," it was found, "are especially proficient in manual occupations requiring a delicate sense of touch. They are well suited to jobs which are repetitious in nature." Again: "The placement of persons who are blind presents various special problems. Small groups of positions in sheltered environment, involving repetitive work, were surveyed in Government establishments and were found to have placement potentialities for the blind." Such findings as these were doubtless at the base of a remark of a certain public official who wrote that: "Helping the blind has its strong appeal to the sensibilities of everyone; on the other hand, we should avoid making the public service an eleemosynary institution."

Fourth, a blind agency head. The executive director of one of the largest private agencies for the blind justifies the failure of the philanthropic groups in these blunt terms:

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The fact that so few workers or organizations are doing anything appreciable to [improve the condition of the blind] cannot be explained entirely on the grounds that they are not in the vanguard of social thinking. It is rather because they are realistic enough to recognize that the rank and file of blind persons have neither the exceptional urge for independence nor the personal qualifications necessary to satisfactory adjustment in the sighted world. . . . It is very difficult and exceptional for a blind person to be as productive as a sighted person.

Fifth, a psychologist. Even plainer language—as well as more impressive jargon—has been used by another authority who is widely considered the pre-eminent expert in the field of blind psychology. “Until recently,” he writes, “the blind and those interested in them have insisted that society revise and modify its attitude toward this specific group. Obviously, for many reasons, this is an impossibility, and effort spent on such a program is as futile as spitting into the wind . . . it is extremely doubtful whether the degree of emotional maturity and social adaptability of the blind would long support and sustain any social change of attitude, if it were possible to achieve it.” If this is not plain enough, the writer continues:

A further confusion of attitude is found in educators and workers for the blind who try to propagandize society with the rational

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concept that the blind are normal individuals without vision. This desperate whistling in the dark does more damage than good. The blind perceive it as a hypocritical distortion of actual facts. . . . It is dodging the issue to place the responsibility on the unbelieving and nonreceptive popular attitudes. . . . The only true answer lies in the unfortunate circumstance that the blind share with other neurotics the nonaggressive personality and the inability to participate fully in society. . . . There are two general directions for attacking such a problem, either to adjust the individual to his environment, or to rearrange the environment so that it ceases to be a difficulty to the individual. It is quite obvious that the latter program is not only inadvisable, but also impossible. However, it is the attack that nearly every frustrated, maladjusted person futilely attempts.

Sixth, a social worker. This sweeping negation of all attempts to modify the prejudicial attitudes of society toward the blind, however eccentric and extreme it may sound, finds strong support in the field of social casework. In areas where "such ideas remain steadfast," reads a typical report, "it is the function of the social caseworker to assist the blind person to work within these preconceived ideas. Since handicapped persons are a minority group in society, there is greater possibility of bringing about a change in an individual within a stated length of time than there is

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in reversing accepted concepts within the culture.” The “well-adjusted blind person,” it is argued, should be able to get along in this restrictive social setting, and the caseworker must concentrate on his personal adjustment since it is easier to reform the client than to reform society.

Seventh, a blind philanthropist. Let me close my list of testimonials with one final citation. I think it must already be sufficiently obvious that, granting the assumptions contained in all these statements, the blind have no business organizing themselves apart from sighted supervision; that a social movement of the blind and by the blind is doomed to futility, frustration, and failure. But just in case the point is not clear enough, I offer the considered opinion of a well-known figure in the history of blind philanthropy:

It cannot, then be through the all-blind society that the blind finds adequate opportunity for the exercise of his leadership. The wise leader will know that the best interests of each blind person lie within the keeping of the nine hundred and ninety-nine sighted people who, with himself, make up each one thousand of any average population. He will know, further, that if he wishes to promote the interests of the blind, he must become a leader of the sighted upon whose understanding and patronage

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the fulfillment of these interests depends. . . . There is . . . no advantage accruing from membership in an all-blind organization which might not be acquired in greater measure through membership in a society of sighted people."

What is the substance of all these damning commentaries? What are the common assumptions which underlie the attitudes of the leaders of blind philanthropy and the authorities on blind welfare? The fundamental concepts can, I think, be simply stated. First, the blind are by virtue of their defect emotionally immature if not psychologically abnormal; they are mentally inferior and narrowly circumscribed in the range of their ability—and therefore inevitably doomed to vocational monotony, economic dependence, and social isolation. Second, even if their capabilities were different they are necessarily bound to the fixed status and subordinate role ordained by "society," whose attitudes toward them are permanent and unalterable. Third, they must place their faith and trust, not in themselves and in their own organizations, but in the sighted public and most particularly in those who have appointed themselves the protectors and custodians of the blind.

A few simple observations are in order. First, as to the immutability of social attitudes and discriminatory

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actions towards the blind, we know from intimate experience that the sighted public wishes well for the blind and that its misconceptions are rather the result of innocence and superstition than of deliberate cruelty and malice aforethought. There was a time, in the days of Rome, when blind infants were thrown to the wolves or sold into slavery. That time is no more. There was a time, in the middle ages, when blind beggars were the butts of amusement at country fairs, decked out in paper spectacles and donkeys' ears. That time is no more. There was a time, which still exists to a surprising extent, when the parents of a blind child regarded his disability as a divine judgment upon their own sins. But that time is now beginning to disappear at least in the civilized world.

The blind are no longer greeted by society with open hostility and frantic avoidance, but with compassion and sympathy. It is true that an open heart is no guarantee of an open mind. It is true that good intentions are not enough. It is true that tolerance is a far cry from brotherhood, and that protection and trusteeship are not the synonyms of equality and freedom. But the remarkable progress already made in the civilizing of brute impulses and the humanizing of social attitudes

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towards the blind is compelling evidence that there is nothing fixed or immutable about the social status quo for the blind and that, if the blind themselves are capable of independence and inter-dependence within society, society is capable of welcoming them.

Our own experience as individuals and as members of the National Federation of the Blind gives support at short range to what long-range history already makes plain. We have observed and experienced the gradual breakdown of legal obstacles and prejudicial acts; we have participated in the expansion of opportunities for the blind in virtually every phase of social life and economic livelihood—in federal, state, and local civil service; in teaching and other professions; in the addition of a constructive element to public welfare. Let anyone who thinks social attitudes cannot be changed read this statement contained in a recent pamphlet of the Federal Civil Service Commission:

Sometimes a mistaken notion is held that . . . the blind can do work only where keenness of vision is not important in the job. The truth appears to be that the blind can do work demanding different degrees of keenness of vision on the part of the sighted. If there is any difference in job proficiency related to a degree of keenness of vision required for the sighted, it is this: the blind

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appear to work with greater proficiency at jobs where the element is present to a noticeable extent in the sighted job than where vision is only generally useful.

Second, are the blind mentally inferior, emotionally adolescent, and psychologically disturbed; or on the contrary, are they normal and capable of social and economic integration? The evidence that they are the latter can be drawn from many quarters: scientific, medical, historical, and theoretical. But the evidence which is most persuasive is that which I have already presented: it is the evidence displayed in the lives and performance of such average and ordinary blind men and women as those who attended our National Convention last summer. It is the evidence of their vocational accomplishments, their personal achievements, the plain normality of their daily lives. To me their record is more than an impressive demonstration: it is a clinching rebuttal.

It would, of course, be a gross exaggeration to maintain that all blind persons have surmounted their physical disability and conquered their social handicap.

It is not the education of the sighted only which is needed to establish the right of the blind to equality and integration. Just as necessary is the education of the blind themselves. For the process of their rehabilitation

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is not ended with physical and vocational training; it is complete only when they have driven the last vestige of the public stereotype of the blind from their own minds. In this sense, and to this extent only, is it true that the blind person must “adjust” to his handicap and to society. His adjustment need not—indeed must not—mean his submission to all prevailing social norms and values. His goal is not conformity but autonomy: not acquiescence, but self-determination and self-control.

From all of this it should be clear that it is a long way yet from the blind alleys of dependency and segregation to the main thoroughfares of personal independence and social integration which we have set as our goal. And I believe it is equally plain that our progress toward that goal will demand the most forceful and skillful application of all the means at our command: that is, the means of education, persuasion, demonstration, and legislation.

We need the means of education to bring the public and the blind themselves to a true recognition of the nature of blindness—to tear away the fossil layers of mythology and prejudice. We need persuasion to induce employers to try us out and convince society to take us in. We need demonstration to prove our capacity and normality in every act of living and of making a living.

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And finally we need legislation to reform the statute books and obliterate the legal barriers which stand in the way of normal life and equal opportunity—replacing them with laws which accurately reflect the accumulated knowledge of modern science and the ethics of democratic society.

This final platform in our program of equality—the platform of adequate legislation—is in many respects the most crucial and pressing of all. For until the blind are guaranteed freedom of opportunity and endeavor within the law there can be little demonstration of their ability and little prospect of persuasion. What is needed is nothing less than a new spirit of the laws, which will uproot the discriminatory clauses and prejudicial assumptions that presently hinder the efforts of the blind toward self-advancement and self-support. The new philosophy requires that programs for the blind be founded upon the social conception of their normality and the social purpose of their reintegration into the community, with aids and services adjusted to these conceptions.

These then are the objectives of the self-organized blind; goals freely chosen for them by themselves. And this is the true significance of an organization of the blind, by the blind, for the blind. For the blind the age of

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charity, like that of chivalry, is dead; but this is not to say that there is no place for either of these virtues. In order to achieve the equality that is their right, in order to gain the opportunity that is their due, and in order to attain the position of full membership in the community that is their goal, the blind have continuing need for the understanding and sympathy and liberality of their sighted neighbors and fellow citizens. But their overriding need is first of all for recognition—recognition of themselves as normal and of their purposes as legitimate. The greatest hope of the blind is that they may be seen as they are, not as they have been portrayed; and since they are neither wards nor children, their hope is to be not only seen but also heard—in their own accents and for whatever their cause may truly be worth.

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A FRIEND OF THE COURT: THE ORGANIZED BLIND

*Address by Jacobus tenBroek, convention of the Empire State Association
of the Blind, New York City, September 2, 1967*

FOR more than a quarter of a century now, a nationwide federation of blind people has flourished in our Republic—an extraordinary people's movement made up of dozens of affiliates like this one, reaching from coast to coast, all of them welded together by a common need and a dominant collective purpose.

That purpose of the organized blind movement has never been a mystery. It has been to forge an instrument of self-expression and social action for a group of Americans traditionally as disorganized as they are—as voiceless as they are sightless. We have never deviated from that purpose. We have never had to. Our Federation has become truly the voice of the blind—not just of the professional blind, or of the

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sheltered blind, or of the pensioned blind, but of all blind Americans.

Nor have we halted at the plateau of self-expression. We have become a vehicle of action and participation at the centers of decision-making—an engine that has powered a social movement of striking effectiveness and historic achievement.

Both of those objectives—self-expression and active participation—were given their classic formulation just ten years ago in the measure we all know as the Kennedy Bill, introduced into the Congress by a junior Senator from Massachusetts, John F. Kennedy. That bill sought to do two things: to guarantee to the blind the right to organize for self-expression, and to make it possible for them to be *consulted* through their *own* organizations in the development of official programs affecting their lives.

The Kennedy Bill had a remarkable history. It lost the congressional battle but won the political war. In fact it scored a great moral victory and social triumph: It brought new recognition and respect to the cause of the organized blind, and it routed the forces of resentment and retaliation which some national agencies had marshalled against them.

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Never again, since that fateful encounter in the halls of Congress, have the organized blind been threatened with extinction or openly challenged as to their right to be in the field. That right, and its attendant prerogatives, were established in the very act of their assertion—in the course of the struggle to acquire statutory protection.

For this reason the Kennedy Bill, a decade after its supposed “defeat,” stands as a graphic symbol of the power of self-organization in the political process of a free society. For, as the organized blind have long since learned, and indeed have always known, it is not enough to have the right to speak; that right is an empty formality unless it carries with it the right to be *heard*. It is only then that monologue turns into dialogue—and that demands are converted into statutes.

In our tripartite system of government there are three focal points at which demands are presented, petitions heard, and grievances redressed. They are those of the legislature, the executive administration, and the courts. I shall not speak here of the executive arm and its vast appointive agencies, with whom our relations in the past have been so often embattled and frustrated. Rather I wish to call attention to our

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developing dialogue with the remaining two branches of the governmental process.

Even before the drama of the Kennedy Bill and its hearings—long years before—the National Federation of the Blind enjoyed a cordial and productive relationship with the Members and committees of Congress. It was there, in 1950, that the first breakthrough occurred against the means test—in the form of a limited exemption of earned income for recipients of aid to the blind. It is in Congress that that breakthrough has since been progressively widened. It is in Congress that the thrust of our movement, and the force of our conviction, have been most consistently felt.

The reasons for this effective relationship are not far to seek. It is not merely that our cause is just and our hearts are pure. It is also because our Federation is representative, democratic, and nationwide—and because our voice is strong. Congress is the marketplace of competing political claims; and in that pragmatic context it is almost correct to argue (in paraphrase of Justice Holmes) that the truth of an idea or a viewpoint is its ability to get itself expressed and accepted in that marketplace. In the legislative struggle the race is not always to the swiftest or the mightiest;

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but it is never to the impotent or silent. It is most often to the vigilant, the alert, and the articulate.

Justice [Frank] Murphy of the United States Supreme Court, in a famous labor relations case of 1940, described the role of communication by affected groups in determining the character of legislation: “Free discussion,” he wrote, “concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destinies of modern industrial society.” Implicit in Justice Murphy’s assertion is the notion that if one examines the output of Congress or of the state legislatures, over a period of time, he will observe within the pattern of prohibitions, provisions, and pronouncements a rough reflection of the relative strength of the active forces in the community, the felt presence to a greater or lesser degree of labor and management, agriculture and industry, metropolis and village. This is the case because of the free communication of interests and viewpoints between the groups and the legislators—communication which enables the one to express and the other to assess particular values in the community. On this theory, the channels of communication must

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be kept open and new and effective modes of communication, such as picketing by organized labor or street demonstrations by organized minorities, must be integrated into the constitutional framework of the guarantees concerning freedom of speech and petition for redress of grievances.

As it stands, however, there is a critical flaw in this theory of political pluralism, of the balance of forces to be obtained from the interplay of the active interests in the field. It leaves out of consideration and omits from the countenance of government, the very section of the population which is of greatest concern to us: namely, the deprived, the poor, the physically disadvantaged, those who are by tradition and almost by definition the least organized, the least articulate, and the least potent of social groups. If the deprived and disadvantaged of America are disorganized and scattered, made dumb by ignorance and bowed down by weakness, unheard across the gulf created by the culture of poverty and unseen across the barrier of stereotypes of disability, then their interests can be registered in the processes of government only as they find reflection in the concern of others who are organized, who are articulate, and who are sympathetic. Where they cannot speak for

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themselves—as in the case of the mentally defective or the mentally retarded—it is important that there be others to speak for them. Let him who assumes to speak for others, however, consider carefully the nature of his self-appointment, the extent to which he truly knows the needs and desires of the group represented, and, above all, whether the group cannot speak for itself. Indeed, the chief responsibility of those who would speak for the poor, the deprived, the disadvantaged, the disabled, the rejected, the politically mute is rather to help them speak for themselves. Such groups must be provided with the opportunity, stimulated with the motive, and developed with the capacity to organize themselves for purposes of self-expression, to pull their own weight and articulate their own interests in the political marketplace. When this has been done, more is accomplished than the mere addition of another voice to the chorus of competing interests. A channel of communication is thereby opened across the cultures and the classes, an avenue of participation and expression which functions as a safety valve for the constructive release of frustration and discontent, as a route around riot and violent explosion, and as an agency of social integration and individual therapy.

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All this we know out of the depths of our own experiences and the triumph of our own movement.

In reforming the statutes of welfare and eroding the foundations of the poor law, as well as in creating them, the legislatures of the states and the Nation have long played a significant role. But their contributions have lately been overshadowed by the remarkable emergence of the third branch of government—the courts—as an ally of progressive action and an instrument of social change.

The legal and judicial system has, to be sure, more often in history been regarded as the agent of conservatism and consolidation rather than as the champion of change. This is no doubt as it should be; and there is much in our Anglo-American heritage that all of us would wish to see preserved intact and unmodified. Winston Churchill, perhaps the greatest conservative of the twentieth century, distilled the essence of that tradition in a single paragraph of his famous speech of twenty-one years ago at Fulton, Missouri:

... [W]e must never cease to proclaim in fearless tones the great principles of freedom and the rights of man, which are the joint inheritance of the English-speaking world, and which, through Magna Carta, the Bill of Rights, the Habeas Corpus,

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trial by jury, and the English Common Law find their most famous expression in the American Declaration of Independence. All this means that the people of any country have the right and should have the power by constitutional action, by free, unfettered elections, with secret ballot, to choose or change the character or form of government under which they dwell, that freedom of speech and thought should reign, that courts of justice independent of the executive, unbiased by any party, should administer laws which have received the broad assent of large majorities or are consecrated by time and custom. Here are the title deeds of freedom, which should lie in every cottage home.

These “title deeds of freedom” are, however, not static documents but living and livid demands, requiring ever new extension and interpretations with each generation. Moreover, the numerous rights of man and of the American citizen are not all, or always, mutually congenial; they are as often in tension as in balance. The right of property and the right of equal protection; the right of a fair trial and the right of a free press; the right of an individual to free speech and the right of the community to preserve order—these are a few of the conflicts among the “title deeds” which call for creative accommodation and adaptation to changing needs and circumstances.

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Whatever may be said of the United States Supreme Court and the lesser courts in past generations, ever since the mid-1950s they have become a great national forum—indeed the principal forum—for the debate of social issues and the resolution of cultural crises. Leaving far behind them the passive function of adjudication, the courts and their officers, lawyers, acting singly and in concert, have positively entered the arena of social action, sometimes themselves instigating social change, sometimes giving their sanction and support to changes set in motion by others. It is certainly too much to say as some have said, that the judges are shaking the foundations of our system. They are rather doing all in their power to preserve that system by making it responsive to the dynamic forces of the times, by bringing its benefits to ever larger portions of the population and by restoring its basic democratic machinery.

Let's look at the court record—or at least at that part of it which speaks to our collective condition. We may put aside with a mere mention the historic series of decisions by the United States Supreme Court which has inspired and sustained the civil rights movement of our times, though those decisions have

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revitalized concepts of equality and equal protection of the laws and applied them to a publicly conferred benefit. We may also pass by the courageous performance of the High Court in the area of legislative reapportionment, though in that performance the Court emphatically reaffirmed the right of all to participate in the process and machinery of government through which decision-makers are selected and decisions made that affect their welfare. We may also touch only lightly the course of decisions in the United States Supreme Court equalizing the scales of justice by granting to poor defendants the same protections and privileges that could always be purchased by the prosperous.

Moved by the same spirit of reform towards equal justice, the Federal courts and state courts have recently begun to tackle some of the evils of the welfare system. On June 19, last, a three-judge United States District Court sitting in Connecticut struck down as unconstitutional the State's residence requirement for public assistance. On June 28, another three-judge United States District Court did the same in Delaware. Since that time, United States appellate courts in the District of Columbia and San Francisco have reversed lower

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court decisions holding that welfare residence requirements present no substantial Federal constitutional issue and directing the creation of three-judge constitutional courts to take up the question. Still four other courts have such cases before them.

Three years ago the Supreme Court of California, in the landmark *Kirchner* case, struck a blow at the hoary doctrine of relatives' responsibility with regard to certain institutionalized recipients of public assistance. More recently, the California Court handed down another decision equally constructive and far-reaching. In vindicating the five-year battle of Benny Parrish, a partially blind caseworker of Alameda County, the State Court proclaimed that welfare recipients do not by virtue of that status abandon their constitutional rights—notably the Fourth Amendment right of protection against unwarranted intrusions into the home and the related right of privacy.

The beginning of welfare, the courts are declaring, cannot mean the end of constitutional well-being. Thus a court in New York has ruled that the welfare laws cannot be interpreted to authorize the imprisonment of recipients who refuse to work under terms imposed by the welfare department; for any other rul-

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ing would be in violation of the Thirteenth Amendment and of the Federal Anti-Peonage Act which prohibits involuntary servitude—a legal euphemism for slavery. Also in New York, but not yet at the stage of final decision, is the case brought by Professor Edwin Lewinson to void discrimination against the blind with respect to their right to serve on juries.

Meanwhile, across the State border, the Supreme Court of Pennsylvania in the Argo case has found that “freedom of mobility is as much a fundamental right of American citizenry as freedom of speech” and that “even the ill and the infirm, to the extent that they can ambulate, may not be imprisoned in their homes.” In upholding the rights of blind pedestrians to walk abroad as others do, Justice Musmanno, in that epoch-making decision, related the struggle of the blind for equal justice to the larger contemporary movement to extend such protection to the poor. His vigorous words are worth recalling:

“There was a time,” he said, “when the law offered no protection to the masses of people; only the lords of the manors, the counts and dukes had rights which the law deigned to uphold. In time the masses sloughed off their chains as serfs, but the law continued to regard

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only the wealthy as worthy of receiving its mantle of protection. . . .”

“Eventually this changed too,” the Justice continued, “and the law gave status to the masses and the poor, but nothing could be done for the maimed, the crippled, the blind, the deaf, and the epileptics. They were only half made up, and it was even assumed that evil spirits abode within them—thus, they were beyond the pale of the law and the courts.” “However, step-by-step,” said the Court, “the law has progressed toward embracing the tenets of humanity, and so we find in the twentieth century that all people, regardless of color, religion, ethnic origin, financial or physical stature, have the right to stand equally with the mighty, the rich, the affluent, and the giants, at the bar of our courts.”

Conceding some rhetorical license on the part of Justice Musmanno, his eloquent summation is not far off the mark. The steps of legal progress have been fast and frequent. For the first time in our national history, the poor, the halt, and the blind are beginning to come under the protection of the Constitution.

Whence this giant stride of justice? How has the reform in the rule of law come about? The answers are complex. They relate to many things: to the shifting

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balance of power among the coordinate branches of the government; to the shifting balance of personalities in the courts, particularly in the high courts; to the shifting balance of forces, factors, and groups in the national community; to the shifting sense of social consciousness and moral values in the entire population; to the myriad ways in which people think that the times are out of joint. Oddly enough, the answers also relate to a simple mechanical fact about the nature of courts and to a complex non-mechanical fact about the nature of law.

Courts are to some extent and in a strange way a passive forum. They are dependent upon others not in their control to bring cases to them for decision. They cannot act on their own volition. They cannot themselves go out and gather the cases required in the development of particular fields of law. They can only sit and wait for someone to enter their doors bearing a complaint or other paper which will set their machinery in motion. Who serves that function in welfare? Who are the individuals, groups, institutions, with motivation or responsibility to initiate, develop, sort, and prosecute cases which systematically test and protest the inadequate and detrimental features of the

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welfare system on constitutional, statutory, policy, and pragmatic grounds? This happens almost spontaneously in fields where great organized economic interests are at stake, such as, for example, corporations, and where lawyers abound and flourish. In them, the courts are not only a last but a first resort and their surveillance of the field has an unremitting impact. Welfare is not such a field. The poor are not a likely clientele for lawyers who wish to prosper. In the absence of lawyers, there has been an absence of cases. It's just that simple.

Not only have financially-motivated lawyers been missing; so have cause-minded organizations. There has been nothing in welfare comparable to, say, the NAACP using the courts to protect the interests and rights of colored people or the various Civil Liberties Unions around the country using the courts to protect civil liberties generally. For half a century, the NAACP has perceived the utility, shaped and financed the instrumentality, and developed the technique for engaging the courts in helping to solve the problems of the Negro. *Brown v. Board of Education*, the civil rights revolution, and the role of the courts and the NAACP in sponsoring, promoting, and conducting it

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are the fruit of that conception and a significant part of history of the last fifteen years. As in civil rights, so in civil liberties. The work of the civil liberties unions has been only less spectacular than the work of the NAACP. In both cases, private, voluntary organizations have been established by interested individuals and groups for the very purpose of making available lawyers and their protective activity to individuals in need thereof because of invasions of their civil rights and liberties. The poverty, isolation, and weakness of the victim thereby ceased to render him impotent, placing the law and the courts within his reach. Staffs of lawyers with the specialized knowledge, with special motivation, and freedom from dependence on fees, were provided.

Within the past few years, beginnings have been made in supplying lawyers to the poor and the deprived. The neighborhood legal office and the whole effort of the OEO and, to a lesser extent, of HEW, is one such beginning. Foundation and university-supported projects designed to stimulate and conduct test cases, such as the welfare law project at the Columbia Social Welfare School, are another. Conscious of the relationship between problems of race and problems of

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poverty in our society, the NAACP is also moving into this area.

With respect to the problems of the blind, the National Federation of the Blind must be counted in this company; indeed, we had entered into the field long before most of the others mentioned, though their presence has vastly enhanced our work. Other organizations of the deprived and disadvantaged are now beginning to walk in our footsteps. The welfare poor, so-called, are no longer silent. We may take just pride in the fact that this is so and that we were the first to organize and to break silence among this once mute part of the population. We have broken that silence not only with respect to legislatures and administrations, but with respect to the courts. In various ways, we have stimulated, guided, aided, abetted, and supported litigation to establish the rights of the blind and otherwise disabled and to gain judicial protection for them. In several of the landmark cases of the last three years—*Argo*, *Kirchner*, and *Parrish*, for example—our role has been significant if indeed it has not been determinative. In this field, we claim for ourselves a role as friend of the court whether we file an *amicus curiae* brief or not.

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To pursue these ends and employ these techniques through organizational activity has now been declared a part of the constitutional right of speech and association by the United States Supreme Court. "In the context of NAACP objectives," said the Court in a recent case, "litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, Federal, State, and local. . . . It is thus a form of political expression . . . [U]nder the conditions of modern government, litigation may well be the practicable avenue open to a minority to petition for redress of grievances."

This is talk about lawyers, about getting into court. Once we get there, what do we find? Do not the judges share the attitudes of the rest of society about the deprived and particularly about the blind? Does not the law, after all, represent a balance of the articulate forces in the community, a balance struck without the weight of the deprived having been lifted onto the scales? To answer these questions about the substantive nature of the law requires a searching reexamination of the law itself. Such a reexamination is primarily the work of scholars. In this area, too, a beginning

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has recently been made, though much still remains to be done. Scholars have been writing articles, attending conferences, preparing papers, exploring various aspects of the topics. Seminars have sprung up in many law schools. Gradually, through these efforts it is becoming clear that still today we have a law of the poor and deprived; that many of the substantive rules of that law emerge from and are dependent on the welfare system; that the rules in many respects are harsh, discriminatory, and unsuited to the ends of a welfare system; that other rules, while ostensibly uniform and evenhanded as to all classes of the population, fall upon the poor and deprived with unusual rigor; that, indeed, in many areas there are grave questions of constitutionality having to do especially with the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States and comparable provisions in the state constitutions.

Here again, in this field of scholarly reinvestigation and reinterpretation, the work of the National Federation of the Blind has been significant. Indeed, it is not too much to say that it has been pioneering. We have conducted, supported, and stimulated research and writing into the law of the poor and deprived

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from the beginning of our existence in 1940. Some of this work has provided the foundation for many of the lawsuits of today and of the past three years, as well as many earlier lawsuits that did not attain such general importance.

We are in a better position than most to know that the old law of the poor and the deprived was a deadly weapon against change. The new law, product not only of legislation but of the courts and of the friends of the court, old and new, will be a living force for progress—if we have the will and the wisdom to make it so. Let us devote our efforts to that endeavor.

NOTES

Introduction

1. Taylor Branch, *Parting the Waters: America in the King Years, 1954–63* (New York: Simon and Schuster, Touchstone, 1989), 7.
2. See chapters 6 and 10.
3. Four of these articles were published consecutively under the general title *Use by the United States Supreme Court of Extrinsic Aids in Constitutional Construction*. Their individual titles were “Debates and Proceedings of the Constitutional and Ratifying Conventions,” *California Law Review* 26 (1938): 437–54; “History of the Times of the Convention,” *California Law Review* 26 (1938): 664–81; “Contemporary Exposition,” *California Law Review* 27 (1939): 157–81; and “The Intent Theory of Constitutional Construction,” *California Law Review* 27 (1939): 399–421. The remaining two articles bearing on extrinsic aids were “Admissibility and Use by the United States Supreme Court of Extrinsic Aids in Constitutional Construction,” *California Law Review* 26 (1938): 287–308; and “Admissibility of Congressional Debates in Statutory Construction by the United States Supreme Court,” *California Law Review* 25 (1937): 326–36.

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4. Jacobus tenBroek, Edward Barnhart, and Floyd Matson, *Prejudice, War, and the Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II* (1954; Berkeley: University of California Press, 3rd printing, 1968).
5. Aaron Wildavsky, "In Memoriam: Jacobus tenBroek, 1911–1968," *American Political Science Review* (November 1968).
6. The reference, admittedly oblique, is to a famous wartime statement of Churchill's in a speech to the Canadian Parliament on December 30, 1941: "When I told them [the French Government] that Britain would fight on alone whatever they did, their Generals told their Prime Minister and his divided Cabinet: 'In three weeks England will have her neck wrung like a chicken.' Some chicken! Some neck!" *The Oxford Dictionary of Quotations*, 3rd ed. (New York: Oxford University Press, 1980), 150.

Chapter I: The Blind Enlightenment

1. Van Wyck Brooks, *The Flowering of New England: 1815–1865* (1936; repr., Cleveland, Ohio: World Publishing Company, 1946), 174.
2. See Robert William Fogel, *The Fourth Great Awakening and the Future of Egalitarianism* (Chicago: University of Chicago Press, 2000), 108. Compare John L. Thomas, "Romantic Reform in America, 1815–1865," *American Quarterly* 17 (Winter 1965): 656–68. For a broad sketch of the *Zeitgeist*, see Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991), 328–30.
3. On Howe's abolitionism, see Harold Schwartz, *Samuel Gridley*

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- Howe: Social Reformer, 1801–1876* (Cambridge, Mass.: Harvard University Press, 1956), chaps. 12–16.
4. Quoted in Laura Richards, *Samuel Gridley Howe* (New York: Appleton-Century, 1935), 108.
 5. Richards, 120–21.
 6. *Ibid.*, 81.
 7. *Ibid.*, 112.
 8. Two recent studies are especially valuable for their insights into the relationship between Howe and his “star pupil,” Laura Bridgman. See Elisabeth Gitter, *The Imprisoned Guest: Samuel Howe and Laura Bridgman, the Original Deaf-Blind Girl* (New York: Farrar, Straus, and Giroux, 2001); and Ernest Freeberg, *The Education of Laura Bridgman: First Deaf and Blind Person to Learn Language* (Cambridge, Mass.: Harvard University Press, 2001).

Chapter II: A Cabin on the Canadian Frontier

1. [Jacobus tenBroek,] “Genealogical Note to the tenBroek Clan,” May 5, 1967, TenBroek Papers, personal files, National Federation of the Blind, Baltimore. See also Johanna tenBroek Adams (sister of Jacobus), “Nicolaas tenBroek Family,” in *Oxen Tails to Jet Trails* (Alberta Provincial Government, n.d.).
2. James J. Parsons, “A Geographer Looks at the San Joaquin Valley,” Carl Sauer Memorial Lecture, University of California at Berkeley, April 30, 1986, http://geography.berkeley.edu/ProjectsResources/Publications/Parsons_SauerLect.html.
3. John Steinbeck, *In Dubious Battle* (New York: Modern Library, 1936).

NOTES

4. For these and other geographical particulars of the San Joaquin Valley and its satellite communities, I have relied on Parsons's Sauer Memorial Lecture; see note 2.
5. See Pierre Burton, *The Last Great Gold Rush: 1896–1899* (Anchor Canada, 2001).
6. Geertje Maria Bogerd tenBroek, memoirs, TenBroek Papers, personal files. This colorful account by Jacobus's mother differs only slightly from the later version passed on by Johanna tenBroek Adams; see note 1.
7. One of the "two girls" (there would be two more in the years to come) was Johanna, who survived her brother Jacobus and edited the family memoirs quoted here.
8. Although the source of this recollection is technically unverified, it is most likely attributed to Jacobus's mother, the doughty Geertje Maria Bogerd tenBroek, who was almost uniquely positioned to observe and reflect on its significance.
9. Bogerd tenBroek, memoirs, TenBroek Papers, personal files.

Chapter III: The Years with "Doctor"

1. Geertje Maria Bogerd tenBroek, memoirs, TenBroek Papers, personal files, National Federation of the Blind, Baltimore.
2. Lillian tenBroek Preston, remarks, Jacobus tenBroek memorial service, Berkeley, Calif., May 5, 1968, TenBroek Papers, personal files; printed in *The Braille Monitor* (July 1968): 20–21.
3. Jacobus tenBroek, Newel Perry Memorial Convocation Address, Berkeley, Calif., May 1963; printed in *The Braille Monitor* 9, no. 1 (January 1966): 26–31.

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4. Preston, remarks, tenBroek memorial service.
5. TenBroek, Perry Memorial Convocation Address.
6. Ibid.
7. Ibid.
8. Ibid.
9. Robert Campbell, memoir, undated, TenBroek Papers, personal files.
10. Ibid.
11. TenBroek, Perry Memorial Convocation Address.
12. Ibid.
13. See note 3, introduction.
14. For a historical discussion of these and later developments in the collective self-organization of the blind in America, see Floyd Matson, *Walking Alone and Marching Together: A History of the Organized Blind Movement in the United States, 1940–1990* (Baltimore: National Federation of the Blind, 1990), especially the introduction.
15. John Steinbeck, *The Grapes of Wrath* (1939; repr., New York: Penguin Books, 1976), 311.
16. Newel Perry, editorial, California Council of the Blind, newsletter, 1939–40.

Chapter IV: Scholar at Law

1. The quotations are from an incomplete letter written to an unnamed friend apparently in 1938. The single available page is in the TenBroek Papers, personal files, National Federation of the Blind, Baltimore.
2. For exact references and titles, see note 3, introduction.

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3. TenBroek to "Hilton," October 12, 1939, TenBroek Papers, personal files.
4. Ibid.
5. TenBroek to "Hugh," June 10, 1940, TenBroek Papers, personal files.
6. Ibid.
7. Ibid.
8. TenBroek to Richard S. French, March 15, 1940, TenBroek Papers, personal files.
9. Ibid.
10. Ibid.
11. TenBroek to Charles Aikin, September 23, 1940, TenBroek Papers, personal files.
12. Ibid.
13. Ibid.
14. Ibid.
15. TenBroek to O. D. Weeks, chairman, Department of Government, University of Texas, January 13, 1941, TenBroek Papers, personal files.

Chapter V: The Making of a People's Movement

1. Opening address by Jacobus tenBroek, president elect, to the inaugural convention of the National Federation of the Blind, Wilkes-Barre, Pa., November 15, 1940. Reprinted in Floyd Matson, *Walking Alone and Marching Together: A History of the Organized Blind Movement in the United States, 1940-1990* (Baltimore: National Federation of the Blind, 1990), 13-15.
2. *The Columbia Encyclopedia*, 2nd ed., s.v. "Wilkes-Barre, Pa."

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3. *The Columbia Encyclopedia*, 2nd ed., s.vv. "Barre, Isaac" and "Wilkes, John."
4. TenBroek to Newel Perry, November 19, 1940, TenBroek Papers, personal files, National Federation of the Blind, Baltimore.
5. Ibid.
6. Ibid.
7. TenBroek, "Have Our Blind Social Security?" Radio speech, National Federation of the Blind national convention, Wilkes-Barre, Pa., November 15, 1945. Reprinted in Matson, *Walking Alone and Marching Together*, 13–15.
8. Ibid.
9. Ibid.
10. "Have Our Blind Social Security?" Presidential address, National Federation of the Blind inaugural convention, Wilkes-Barre, Pa., November 16, 1940. Reprinted in Matson, 17–23.
11. Matson, *Walking Alone and Marching Together*, 17.

Chapter VI: Equal under Law

1. Thurgood Marshall to tenBroek, August 18, 1953, TenBroek Papers, personal files, National Federation of the Blind, Baltimore.
2. TenBroek and Graham carried on a successful earlier collaboration, lasting for several years in the mid-1940s, which produced authoritative annual analyses of developments in state constitutional law and were widely regarded as essential reading for scholars and students in jurisprudence and political

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- science. The final article on which they collaborated was "State Constitutional Law 1945-1946," *American Political Science Review* 40 (1946): 703-28.
3. *Screws v. United States*, 325 U.S. 91. For a discussion of this case, see Robert J. Harris, *The Quest for Equality* (Baton Rouge: Louisiana State University Press, 1960), 125-29.
 4. TenBroek to "Terry," February 25, 1946, TenBroek Papers, personal files.
 5. Ibid.
 6. Ibid.
 7. Howard Jay Graham, "The Early Anti-Slavery Backgrounds of the Fourteenth Amendment," *Wisconsin Law Review* 1950 no. 3 (April 1950): 479; no. 4 (May 1950): 610.
 8. Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 1975), 625.

Chapter VII: Constitutional Surrender

1. Jacobus tenBroek, Edward Barnhart, and Floyd Matson, *Prejudice, War, and the Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II* (Berkeley: University of California Press, 1954), 69.
2. Ibid., 1-2.
3. Ibid., 2.
4. Ibid.
5. D. P. Kent, review of *Prejudice, War, and the Constitution*, in *Annals of the American Academy of Political and Social Science* 299 (May 1, 1955): 169.

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6. TenBroek, Barnhart, and Matson, *Prejudice, War, and the Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II*, 3rd printing (Berkeley: University of California Press, 1968).
7. *Ibid.*, 332.
8. Roger Baldwin, introduction to *America's Concentration Camps*, by Allan J. Bosworth (New York: Norton, 1967), 8.
9. TenBroek, Barnhart, and Matson (1968), vi.
10. *Ibid.*, xi.
11. *Ibid.*, 325.
12. *Ibid.*, 332–33.

Chapter VIII: The Right to Organize

1. For a valuable discussion of Kennedy's sympathies with issues of disability with respect to his political inclinations, see Robert Dallek, *An Unfinished Life: John F. Kennedy, 1917–1963* (Boston: Little, Brown, 2003), especially chap. 3, "The Terrors of Life."
2. The official nomenclature for the Kennedy Bill was the Kennedy-Baring Bill, thus acknowledging Walter S. Baring, Democratic congressman of Nevada, who cosponsored the legislation in the House of Representatives.
3. For a rounded description of the Kennedy Bill and its senatorial champion, see Floyd Matson, *Walking Alone and Marching Together: A History of the Organized Blind Movement in the United States, 1940–1990* (Baltimore: National Federation of the Blind, 1990), 87–88.
4. *Ibid.*
5. Quoted in Matson, 201.

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6. Robert F. Kennedy, speech at the National Federation of the Blind's silver anniversary convention, Washington, D.C., July 9, 1965; reprinted in *The Braille Monitor* (September 1965): 44–45.
7. Ibid., 202–3.
8. Ibid.

Chapter IX: TenBroek for the Defense

1. Jacobus tenBroek, "California's Dual System of Family Law: Its Origins, Development, and Present Status," Part I, *Stanford Law Review* 16 (March 1964): 257–357; Part II, *Stanford Law Review* 16 (July 1964): 900–981; Part III, *Stanford Law Review* 17 (April 1965): 614–82.
2. Jacobus tenBroek, ed., *The Law of the Poor* (San Francisco: Chandler, 1966). See also Joel F. Handler, ed., *Family Life and the Poor: Essays by Jacobus tenBroek* (Westport, Conn: Greenwood, 1968).
3. Handler, 3–4.
4. Ibid.
5. Ibid.
6. Ibid., 212.
7. Quoted in Handler, 212.
8. Quoted in Handler, 213.
9. Wording of the "Levering oath," as approved by the University of California Board of Regents, June 24, 1949.
10. Ibid. For a concise summary of the numerous versions and variations of the faculty loyalty oath leading up to the conclusive "Levering oath," see George R. Stewart, *The Year of the Oath* (Garden City, N.Y.: Doubleday, 1950), 146–48 (appendix A).

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11. David P. Gardner, *The California Oath Controversy* (Berkeley: University of California Press, 1967).
12. TenBroek, remarks, official report (mimeographed), Meeting of the Northern Section of the Academic Senate, November 7, 1949, pages 3–4, TenBroek Papers, personal files, National Federation of the Blind, Baltimore.
13. Gardner, *California Oath Controversy*.
14. TenBroek, draft of additional remarks (untitled, approximately 4 pages double-spaced), Meeting of the Northern Section of the Academic Senate, November 7, 1949, TenBroek Papers, personal files.
15. For graphic details and contemporaneous commentary, see David Lance Goines, *The Free Speech Movement: Coming of Age in the 1960s* (Berkeley, Calif.: Ten Speed Press, 1993).
16. Ibid.
17. *Oceanside (Calif.) Blade-Tribune*, January 22, 1965.

Chapter X: The Road to Equality

1. Jacobus tenBroek, *Equal under Law* (New York: Collier Books, 1965), 15. This is a new and enlarged edition of tenBroek's earlier work, *The Antislavery Origins of the Fourteenth Amendment* (Berkeley: University of California Press, 1951).
2. Ibid.
3. Ibid.
4. Ibid.
5. Jacobus tenBroek and Joseph Tussman, "The Equal Protection of the Laws," *California Law Review* 37 (1949): 341–81.
6. Quoted in tenBroek, new introduction to *Equal under Law*.

NOTES

7. For contemporaneous discussion of the postwar period regarding civil rights and constitutionality issues (and hence tenBroek's role), see the following: Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 1975), parts 2 and 3, esp. chap. 24; Joel F. Handler, ed., *Family Law and the Poor: Essays by Jacobus tenBroek* (Westport, Conn.: Greenwood, 1968), chaps. 1 and 6; Robert J. Harris, *The Quest for Equality: The Constitution, Congress, and the Supreme Court* (Baton Rouge: Louisiana State University Press, 1960), esp. chaps. 1–3.
8. TenBroek, "The Right to Live in the World: The Disabled in the Law of Torts," *California Law Review* 54 (1966): 841–919.
9. Pertinent documents related to these events are variously collected in the TenBroek Papers, personal files for 1966, National Federation of the Blind, Baltimore, under the headings "Welfare Rights Organization," "California Federation of the Poor," and "Organization of the Poor." They include the constitution of the California Welfare Rights Organization (as adopted June 4 and 5, 1966, Fontana, Calif.), together with successive bulletins and official correspondence. Of particular significance is a letter from tenBroek, dated June 8, 1966, that is addressed to "All Welfare Rights Groups" and begins: "Dear Friends, We made history in Fontana. The constitution was adopted and a State Welfare Rights Organization formed. This is the first such statewide organization anywhere in the country."
10. TenBroek, "Unity and Equality: The I.F.B.," *The Braille Monitor* 9, no. 1 (1966): 26–31.

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11. *World Book Encyclopedia Online*, s.v. "King, Martin Luther, Jr." (by David L. Lewis).
12. Kenneth Jernigan, "The Man and the Movement," Jacobus tenBroek Memorial Address, 1968; printed in *The Braille Monitor* (July 1968): 29; reprinted in Floyd Matson, *Walking Alone and Marching Together: A History of the Organized Blind Movement in the United States, 1940–1990* (Baltimore: National Federation of the Blind, 1990), 226–31.
13. Lillian tenBroek Preston, remarks, Jacobus tenBroek memorial service, Berkeley, Calif., May 5, 1968, TenBroek Papers, personal files; printed in *The Braille Monitor* (July 1968): 20–21.

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